(17,480.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 366.

ANNA V. WHITNEY, APPELLANT,

vs.

EDWIN B. HAY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

ANNA V. WHITNEY, Appellant,
vs.
EDWIN B. HAY.
} No. 813.

a Supreme Court of the District of Columbia.

EDWIN B. HAY
vs.
ANNA V. WHITNEY ET AL.
} No. 17942. In Equity.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Original Bill.*

Filed December 31, 1896.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY
vs.
ANNA V. WHITNEY, RICHARD U. PIPER, and George Moore, Trustee.
} In Equity. No. 17942.

The complainant, by his bill of complaint, respectfully represents:

First. That he is a white citizen of the United States and a resident of the District of Columbia, and files this bill in his own behalf.

Second. That the defendant Anna V. Whitney is a citizen of the United States and a resident of the town of Newport, State of Maine; that the defendant Richard U. Piper is a citizen of the United States and a resident of the District of Columbia, but temporarily residing in the town of Newport, State of Maine, and that the defendant George Moore is a citizen of the United States and a resident of the city of Chicago, State of Illinois.

Third. That this suit is brought against the defendant Anna V. Whitney as the grantee under a certain deed from the defendant Richard U. Piper, against whom these proceedings are brought as

grantor under the said deed, which is more fully set forth and described hereinafter in this bill of complaint, and that the bill is
2 filed against the defendant George Moore as trustee under a certain deed of trust from the said defendant, Richard U. Piper, the same being more fully described and set forth hereinafter in this bill of complaint.

Fourth. That the defendant Richard U. Piper and his wife, Elizabeth F. Piper, left the city of Chicago on or about the 25th day of March, 1887, and came to the city of Washington, District of Columbia, to reside and dwell with the complainant in his home, in the city of Washington, District of Columbia, under and by virtue of certain agreements, covenants, and conditions entered into by and between the said complainant and the defendant Richard U. Piper, by which, in consideration of the support, maintenance, caring for, and providing for the defendant Richard U. Piper and his said wife, Elizabeth F. Piper, during and for the balance of the lives of them and each of them, that he, the said defendant, Richard U. Piper, together with his wife, Elizabeth F. Piper, or the survivor of them, would leave and convey, by will or otherwise, all of the property, real and personal, of every nature and kind, wherever situated, to and unto this complainant, his heirs and assigns forever, and that, to wit, on December 23rd, 1885, in addition to other propositions, one was made by a paper writing by the said Richard U. Piper and addressed to the complainant, and that subsequently, to wit, on the 14th day of January, 1886, under and by virtue of a will made and executed by the said Richard U. Piper and Elizabeth F. Piper, his wife, all of the property of the said Richard U. Piper and Elizabeth F. Piper, his wife, was bequeathed and devised to and unto the said complainant, with the exception of a few legacies, amounting to about $500.00.

Fifth. That following and immediately after the arrival of the said defendant, R. U. Piper, and his wife to take up their abode with this complainant, on or about March 25, 1887, he
3 had agreed with the complainant further, in consideration for the care of this aged couple, that they formally and of their own accord adopt the said complainant as their son, and so regarded and esteemed him during all the time up to the date of the death of Elizabeth F. Piper, the wife of the defendant Richard U. Piper, which took place at Saratoga Springs, New York, on the 3rd day of January, A. D. 1893.

Sixth. That immediately after the beginning of the performance of the contract and agreement between this complainant and the defendant Richard U. Piper and his wife, Elizabeth F. Piper, he further agreed and covenanted with the complainant that in order to better accommodate the family, which was augmented by the presence of the defendant and his wife, that he would build a house for the complainant in the city of Washington and insisted and urged upon such being begun immediately, so that the complainant purchased in the city of Washington, District of Columbia, lots 139, 140, and 141, in George Emmons' subdivision of lots in square 193, upon which should be built a house, which should be

the property and a part of the estate of the said defendant, Richard U. Piper, to be left by will to the complainant; that the complainant drew the plans for the said house, submitted them to the defendant and his wife, who approved the same, selected the architect, who perfected and carried out said plans, the complainant contributing a part of the cost of the finishing of the house, and when the same was completed and finished the complainant, with the defendant Richard U. Piper and his wife, came to reside therein, on or about the first day of August, 1888, the defendant R. U. Piper and his wife having continuously resided in the home of the complainant since March 25, 1887.

4 Seventh. That under and in pursuance of the agreement and promises made by the defendant to the complainant, as aforesaid, thereafter and on or about the first day of July, A. D. 1888, the said defendant, Richard U. Piper, made — executed a will specifically setting forth and describing the said property—that is, as above described, lots 139, 140, and 141 in George Emmons' subdivision of lots in square 193—together with the property situated in Chicago, and devising the said property to and unto the said complainant in trust for Elizabeth F. Piper during her lifetime and at her death, in remainder, in fee to the said complainant, his heirs and assigns forever.

Eight-. That the defendant and his wife received from the complainant and his wife all the love and affection that it was possible to be bestowed upon them and all of the care and devotion that could possibly be devoted to them as if the complainant and his wife had been to them in reality a son and daughter, and that the relations were most happy in every respect.

Ninth. That on the 26th day of August, 1892, the defendant Richard U. Piper and his wife, Elizabeth F. Piper, went upon a visit to Saratoga Springs, New York, where, after a brief illness, the wife of the defendant Richard U. Piper passed away, the complainant being in constant communication with them and at their request frequently in attendance upon them at Saratoga Springs during the illness of the said Elizabeth F. Piper. Prior to the departure of the defendant and his wife for this visit to Saratoga Springs, as a proof further of the relations existing between the complainants and the defendant and the love and affection shown by the defendant for the complainant, both the defendant and

5 his wife, in their own handwriting, made and deposited among his papers the memorandum of a last will and testament devising all the property of the said defendant and his wife to and unto this complainant, his heirs and assigns forever, in the words following: "I give and bequeath to Edwin B. Hay of Washington, D. C., on account of the love I bear him and his many kind services he has done for me, all the rest of my estate, real and personal and mixed, to be his absolutely, for his sole use and disposal." And that during the illness of the said Elizabeth F. Piper and while they were at Saratoga Springs, to wit, on or about the 8th day of December, A. D. 1892, the defendant, of his own free will and accord and in further performance of his agreement aforesaid, made

and executed another last will and testament devising all of his said property, wherever situated, to this complainant, his heirs and assigns forever.

Tenth. That upon the death of his wife, Elizabeth F. Piper, the defendant being attacked and enfeebled by a visitation of nervous prostration, he became temporarily mentally affected, and when this complainant brought the remains of defendant's wife, Elizabeth F. Piper, to the city of Washington for the purpose of interment the *the* defendant Piper positively refused to accompany the same, and when the complainant went again to Saratoga to bring the said defendant home he refused to come, so the complainant left him in charge of the best of medical attendance and trained nurses upon his promise to return to Washington in a fortnight's time. While under the allusion one S. G. Thomas, a former business agent of *the* Chicago, forcibly and without the knowledge or consent of the said complainant took and carried away from Saratoga to his home in Chicago the said defendant, where he took advantage
6 of his enfeebled condition and the disturbed state of his mentality, and restrained him from returning to his home in Washington, and forcibly took possession of him and his effects, and, while under his coercion and influence, caused him to make a deed to the defendant George Moore, in trust, to subject his property to the charge of his care and keeping, to the said Thomas during the balance of his, the defendant Piper's, life, which deed, complainant is informed, has been regularly set aside by proceedings in the circuit court of Cook county, State of Illinois, which said deed was made by the defendant Richard U. Piper on the 17th day of October, 1893, and was recorded September 18th, 1895, in Liber 2055, folio 96, of the land records of the District of Columbia, and described as follows: Lot 17, block 16, in the Canal Trustees' subdivision of the west one-half of the west one-half of the northeast one-fourth of section 17, township 39 north, of range 14 east, of the principal meridian, in the city of Chicago, county of Cook, State of Illinois; and also lots 139, 140, and 141 in George Emmons' subdivision of lots in square 193, in the city of Washington, District of Columbia, which subdivision is duly recorded in Liber 12, folio 130, of the surveyor's office of the District of Columbia, which said deed was obtained from the defendant Richard U. Piper while he was in an enfeebled state of mind and incapable of making a valid deed or contract, the same being a fraud upon the rights of the complainant and in total violation of the agreement hereinbefore referred to.

Eleventh. That the defendant was kept under such surveillance that it was impossible to have free correspondence with this complainant, and that finally, when the defendant sent for the
7 complainant to bring him home, the complainant, upon his arrival at Chicago for the purpose of doing so, found that the defendant had met with a severe accident in falling down the stairs, so that it was impossible to remove him.

Twelfth. That afterwards, to wit, on or about the 15th day of June, 1895, the said defendant, Anna V. Whitney, a niece of the defendant Richard U. Piper, came to the complainant to inquire

the whereabouts of her uncle, presuming him to be in Washington at his home, and, being informed that he was in Chicago, she went to that place for the purpose of bringing him to his home in Washington, when, to the surprise of the complainant, she carried the defendant to her home in Newport, Maine, where he arrived on the 21st day of June, A. D. 1895, and immediately announced to this complainant that he had gone there on a visit for the summer, where, at his request, this complainant visited him for the purpose of arranging for his return home.

Thirteenth. That, notwithstanding frequent importunities for his coming, the defendant has remained at the home of the said defendant, Anna V. Whitney, under her care and influence, until August 4th, A. D. 1896, when the complainant was absent from the country in Europe, the defendant Richard U. Piper, for the sole purpose of defrauding this complainant and depriving him of the benefit of his agreement with him concerning the disposition of his estate, and acting under the influence and control of the defendant Anna V. Whitney, made a deed, conveying the said real estate situate in the city of Washington, District of Columbia, to wit, lots 139, 140, and 141 in George Emmons' subdivision of lots in square 193, which subdivision is duly recorded in Liber 12, folio 130, of the sur-
8 veyor's office of the District of Columbia, which said deed was recorded October 17th, A. D. 1896, in Liber 2146, folio 349, of the land records of the District of Columbia, to and unto the said defendant, Anna V. Whitney, this said property being the home of the said complainant and the defendant Richard U. Piper, whose apartments in said premises have been continually reserved and set apart for his use, his furniture and effects being and remaining in and about and upon the said premises.

Fourteenth. That the complainant faithfully performed and kept his part of the contract, covenant, and agreement during the lifetime of the defendant's wife, Elizabeth F. Piper, and has been ever ready and willing to continue the care, maintenance, and support of the defendant Richard U. Piper, as covenanted and agreed, and that in further performance of the agreement aforesaid complainant has from 1888 until the present time paid all the taxes on said property in the District of Columbia above referred to, and has likewise paid for the making of all repairs on said property, besides contributing to the cost of the building, as hereinabove stated; but, notwithstanding performance and the readiness of the complainant to perform his part of the contract, the defendant has persisted and still persists in remaining away without any cause whatever on the part of the complainant, and by the execution of the deeds hereinabove referred to has disabled himself from keeping and performing his contract obligations to and agreement with complainant, and that as the complainant is being injured in his rights and privileges in the future enjoyment of the said property by the acts of the defendant in thus conveying the property to the said Anna V. Whitney, intending thereby to defeat the agreement and
9 to prevent the preservation of the property to its uses and ends, as hereinbefore set forth, by the said disposition of the

property inconsistent with said agreement, and it being necessary to further restrain the defendants in any disposition of the property—

Wherefore, premises considered, complainant prays:

First. That process of the court may issue, directed to the said defendants and each of them, requiring them and each of them to appear and answer the exigencies of the foregoing bill of complaint.

Second. That, pending the final hearing hereof, the said defendants, Anna V. Whitney, Richard U. Piper, and George Moore, their agents or attorneys or any person or persons acting for them, be restrained and enjoined from mortgaging, encumbering, or otherwise disposing of or conveying by deed, conveyance, or otherwise the property hereinabove referred to and described or any part thereof in any manner inconsistent with the agreement and conditions hereinbefore set forth.

Third. That the conveyance from the said defendant, Richard U. Piper, to the defendant Anna V. Whitney be declared a fraud upon the complainant and in violation and disregard of the contract and agreement between the said Richard U. Piper and the complainant, and that the said Anna V. Whitney, defendant, be decreed to be a trustee of the legal title of said property, holding the same in trust for the complainant in accordance with the said agreement entered into between complainant and the said defendant, Richard U. Piper, and, further, that the said deed to the defendant George Moore, trustee, be decreed to be cancelled and set aside as fraudulent and void and in violation and disregard of the rights, title, and interest of complainant in the premises.

Fourth. And for all such other and further relief as the nature of the case may require.

And he would forever pray, etc.

EDWIN B. HAY.

J. WILSON,
A. HOEHLING,
E. B. HAY,
Attorneys for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I solemnly swear that I have heard read the bill of complaint by me subscribed, and that I know the contents thereof; that the facts set forth of my personal knowledge I know to be true; that those therein stated on information and belief I believe to be true.

EDWIN B. HAY.

Subscribed and sworn to before me this 31st day of December, A. D. 1896.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clk.*

11 *Answer of Anna V. Whitney.*

Filed January 30, 1897.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY, Complainant,
vs.
ANNA V. WHITNEY, RICHARD U. PIPER, George Moore, Trustee, Defendants.
} In Equity. No. 17942.

The separate answer of Anna V. Whitney, one of the defendants in the above-entitled cause, to complainant's bill of complaint.

1st, 2d, & 3rd. The averments made in the first, second, and third of complainant's bill are substantially true, and are admitted, except as to the statement that the defendant Richard U. Piper is temporarily residing in the town of Newport, State of Maine. This averment is denied. This defendant states that that is his permanent home.

4th. Answering the fourth paragraph of complainant's bill, this defendant says that she admits that some years ago the defendant Richard U. Piper and his then wife, Elizabeth F. Piper, left the city of Chicago and came to the city of Washington, District of Columbia, to reside; that she has no information as to when said removal took place, but believes it to have been about ten years ago; that upon information and belief she states that at the time of said removal, nor at any time thereafter, was there any agreement or covenant made and entered into by and between the complainant and the said Richard U. Piper by which the said last-named party

12 was to dwell with the complainant at his home in the said city of Washington. From information derived from various sources, and her belief based upon such information, she denies that there was any such contract or any contract whatever by which, in consideration of the support, maintenance, caring for, and providing for the said defendant and his wife, Elizabeth F. Piper, during and for the balance of the lives of them and each of them, he, the said defendant, Richard U. Piper, together with his wife, Elizabeth F. Piper, or the survivor of them would leave and convey by will or otherwise all of the property, real and personal, of every nature and kind, wherever situate, unto complainant in fee-simple, as averred in said paragraph of said bill, and will demand strict proof thereof. As to the paper-writing addressed to complainant, bearing date December 23, 1885, this defendant has no knowledge or information upon which she may reasonably base a belief as to whether or not any such writing was made as is set up, and therefore denies that any such was made, and will desire of the complainant such proof thereof as he may be able to make; neither has this defendant any knowledge of the will averred to have been made by said defendant and his wife, Elizabeth F., bearing date the 14th of January, 1886, as stated in said paragraph of said bill, nor

has she any information upon which she may reasonably base a belief as to whether or not any such testamentary writing was ever made as stated; she will therefore demand strict proof of this allegation of complainant's bill.

5th. Answering the averments made in the fifth paragraph of complainant's said bill, this defendant states that she has no knowledge as to the date when the defendant Richard U. Piper and
13 wife took up their abode with the complainant, and therefore leaves him to make such proof of this statement as he may deem material. She denies that there was any agreement with the complainant that the said defendant, Richard U. Piper, and his wife should formally adopt the said complainant as their son; she is informed and believes and states that said complainant has never changed his name to Piper, as usually occurs in cases of formal adoption, and denies that they regarded or esteemed him as their son up to the time of the death of the said Elizabeth F. Piper, as stated in said paragraph of said bill. The date and place of the death of said Elizabeth F. Piper is correctly stated in the said paragraph of the said bill and is admitted. It may have been true, during the lifetime of the said Elizabeth F. Piper, that she sometimes called the complainant "Son Ned" or may have occasionally used some equivalent expression, but she states that such was not her common mode of addressing him, and upon information and belief she states that he was never so called by the defendant Richard U. Piper.

6th. Answering the sixth paragraph of complainant's bill, this defendant states that by deed dated June 15, 1887, Charles B. Pearson and wife conveyed unto the defendant Richard U. Piper lots 139, 140, and 141, in George E. Emmons' subdivision of lots in square 193; said deed is duly executed and acknowledged, and is recorded in Liber 1254, folio 412 *et seq.*, one of the land records of the District of Columbia, as will appear by reference to said original deed, which is filed with this answer, marked "Defendants' Exhibit No. 1," and is prayed to be read and considered in connection herewith.
14 She denies that this purchase was made in pursuance of any agreement or covenant made by the complainant with the said Richard U. Piper and wife, as stated in said paragraph of said bill. She admits that a house was erected by the said defendant upon said property. She denies that it was built upon a contract, stipulation, or agreement of any kind whatsoever between complainant and the said Piper, and will require strict proof thereof. She denies that said property was to be left by will to the complainant. She denies that the complainant drew the plans for said house. She admits that an architect was employed by the defendant Richard U. Piper, who prepared the plans and specifications for the construction of said house. This defendant admits that complainant loaned her uncle, the defendant Richard U. Piper, the sum of altogether $800, which was expended by him in putting in steam-heating apparatus and the purchase of mantels for said house, which said sums of money were repaid to the complainant in full, and for which said sums of money so advanced, as aforesaid, said defendant,

Richard U. Piper, holds complainant's receipt. This defendant has no information as to when the said house was completed; and while not doubting the accuracy of the date named by said complainant, yet she leaves him to make such proof thereof as he may deem material. She denies that said Richard U. Piper and his wife have resided in said house since March 25, 1887. On the contrary, she says they left there some time in the summer of 1892, and that they nor either of them has resided there since.

7th. Answering the seventh paragraph of complainant's said bill, this defendant states that she has no knowledge of the facts
15 therein stated, but from information and belief she denies the same, each and severally, and will require of the complainant strict proof thereof.

8th. Answering the eight- paragraph of complainant's said bill, this defendant denies that the defendant Richard U. Piper received from complainant and his wife all the love and affection that was possible to be bestowed upon them, and all the care and devotion that could possibly be devoted to them, and that the relations were most happy in every respect; that, on the contrary, she is informed and believes, and therefore states, that Mrs. Hay, complainant's wife, for a long time prior to the departure of said Richard U. Piper and wife for Saratoga, as stated in said biil, was disagreeable to the defendant Richard U. Piper and to his said wife, and that the children were impertinent and disrespectful in their conduct towards them to such a degree as to render their further abode there unpleasant and undesirable.

9th. Answering the ninth paragraph of said bill, defendant admits that the defendant Richard U. Piper and wife left Washington and went to Saratoga Springs, N. Y., some time in August, 1892. She admits that while there, some time in January, 1893, the said Elizabeth F. Piper died. The complainant may have visited Saratoga while the defendant Richard U. Piper and his wife were there, but upon information and belief she denies that such visits were at the instance of the said Richard U. Piper and his wife, or either of them.

This defendant has no knowledge or information as to the memoranda of a last will and testament alleged in said paragraph of said bill to have been made, whereby all the property of said
16 defendant and his wife was devised to him, the said complainant, in manner and form as set out in said bill, or in any other manner, and therefore denies the making and execution of the same, and will demand strict proof thereof. Answering further, defendant denies from information and belief that said Richard U. Piper made a will bearing date on the eight- day of December, 1892, at Saratoga, as alleged in said bill, either of his own will and accord or in pursuance of any agreement, as alleged in said paragraph, devising, as therein stated, all of his property to complainant, in fee-simple.

10th. Answering the tenth paragraph of complainant's bill, the defendant says that she admits the death of the defendant Richard U. Piper's wife at Saratoga, and that the remains of his deceased

wife were brought to the city of Washington for the purposes of interment, and she admits that the remains were brought to said city by direction of the complainant. She admits further that the defendant Richard U. Piper was ill at the time of the death of his wife, and she believes that his nervous system was somewhat impaired at the time, to what extent she does not know, but from information and belief she states that he was unfit to accompany the remains to Washington. She admits that her uncle was under the care and attendance of a physician and nurse during his illness at Saratoga, but she states that the expenses of such attendance were paid by the said Richard U. Piper, and that the hotel charges for complainant while at Saratoga were also paid by the said Richard U. Piper. She admits that from Saratoga her uncle went to
17 Chicago; that he went in company with a G. S. Thomas, who was then and had been agent for certain property owned by the defendant Richard U. Piper, situate in the city of Chicago. She has no information as to whether any force was used by the said Thomas or not in procuring said defendant's removal from Saratoga to Chicago. She admits that it was without the knowledge and consent of the said complainant, and that the removal took place while the said Richard U. Piper was ill; that the said Thomas took possession of the effects of the defendant Richard U. Piper, and took him to Chicago to his, the said Thomas', own house, and that he kept him under restraint. She admits that the said Richard U. Piper made a deed to the defendant George Moore, in trust to subject his property to the charge of his care and keeping during the balance of his, the defendants Piper's, life. She admits that said deed in trust was set aside by proceedings in the circuit court of Cook county, State of Illinois, which said proceedings, she avers, were instituted by her uncle, the said Richard U. Piper. She admits the date and recording of said deed and the description of the property substantially as set out in said paragraph of said bill. She admits further that said instrument was procured from the said Richard U. Piper while his mind was enfeebled and he was incapable of making a valid deed or contract, but she denies that the making of said instrument was in any way in fraud of the rights of complainant or was in violation of any agreement ever made by the said Richard U. Piper with complainant. She states further that subsequently to said decree setting aside said conveyance the said George Moore executed and acknowledged in due form of law a release of the said deed in trust set out in said paragraph of complainant's said
18 bill, and the same was duly made of record in Liber 2132, folio 313 *et seq.*, of the land records of the District of Columbia, the original of which is filed with this answer, marked "Defendants' Exhibit No. 2," and is prayed to be read and considered as part hereof.

11th. Answering the eleventh paragraph of complainant's bill, this defendant says that she admits that the said Richard U. Piper was kept under surveillance, as stated in said paragraph, and that the true object, character, and nature of this will be set out in the course of this her answer. She has no knowledge or information

sufficient to base a belief as to whether or not the defendant Richard U. Piper sent for the complainant to bring him to Washington, or whether the complainant went to Chicago for that purpose of his own accord, and leaves him to make such proof thereof as he may be advised is material. She admits that during his stay in Chicago he met with an accident in falling downstairs, which laid him up for some little time; just how long she is unable to state. As to the character and extent of this injury she is unable to state whether it was such as to render it impossible or unadvisable to remove him from Chicago, nor has she information upon which she can base a belief as to this allegation, and leaves the complainant to make such proof thereof as he may deem material.

12th. Answering the twelfth paragraph of complainant's bill, this defendant admits that she went to Chicago at or about the time stated in said paragraph of said bill for the purpose of seeing her uncle, the said defendant, Richard U. Piper. She denies that she went for the purpose of bringing him, the said Piper, to his home in Washington, but says she went to ascertain how he was
19 situated, the condition of his health, and whether he was comfortable and happy where he was, and with the purpose of inviting him to spend the summer at her home in Newport, Maine, if agreeable to him, believing that a change of climate and rest and care among his own people would help to restore him to his usual condition of health; that the wife of the said defendant, Richard U. Piper, was in the habit of regularly corresponding with this defendant's mother, who is the only living sister of the defendant Richard U. Piper; that her uncle, the said Richard U. Piper, seldom wrote to any one. This defendant did not learn of the illness or death of her aunt, the wife of the said Richard U. Piper, until after that event had taken place. She had learned that he, with his wife, had gone to Saratoga, N. Y., and that he was out of health there; that she first learned of the death of her said aunt, the wife of said defendant, Richard U. Piper, through a relative living in Boston; that complainant never advised her or her mother nor did he advise any of the relatives of the said defendant, Richard U. Piper, of his said wife's death, as defendant is informed and believes, and therefore states. Some time after the death of the wife of said Richard U. Piper, and before his removal to Chicago, defendant learned that an anonymous letter had been sent to a brother of the said defendant, Richard U. Piper, stating that the said defendant was very ill at Saratoga, and that he was poor and out of money, and requesting that money might be sent to him; fearing that this might be true, not knowing that he had any property or its condition, at the instance of her mother, the sister of the said defendant, this defendant set about to inquire as to his condition in order that if he was in distress and in need of money or financial aid they might afford such assistance and relief as was in their power.
20 Influenced by these motives and feelings, and these alone, she went to Chicago and found her uncle, the said Richard U. Piper, living with the said G. S. Thomas, in the said Thomas, house; that her uncle was at that time in his seventy-seventh year

and while not strong physically, was able to walk about the house and to go out occasionally; that his mind was perfectly clear; that she told him that her mother desired that he should visit them that summer, if agreeable, and that she would take him home with her; that said defendant was much pleased at the suggestion, and was very anxious to go to Maine, and declared that he desired to pass the remainder of his days with his sister, this defendant's mother. In accordance with his wishes he accompanied this defendant to her home in the town of Newport, State of Maine, where he has since resided. He did not desire to come to Washington. Defendant suggested to him that they would go home by way of Washington and stop there if he desired, but he declined, and they went directly home, as above stated. This complainant admits that complainant visited the defendant Richard U. Piper at Newport in the summer of 1895, and was entertained by defendant at her home. She denies that he came by the invitation and request of the said Richard U. Piper, but states that he came of his own volition; that while there, defendant is informed and believes, and therefore states, that he tried to obtain from the defendant Richard U. Piper a deed of his property situated in Washington, D. C.; that her uncle, the defendant Richard U. Piper, declined to give him the conveyance as requested. In so far as any of the allegations contained in said twelfth paragraph of said bill are inconsistent with the statements herein made, they are untrue and are severally and specifically denied.

21 13th. Answering the thirteenth paragraph of complainant's bill, this defendant admits that her uncle, the said defendant, Richard U. Piper, has remained with her and her mother, his sister, from June, 1895, up to the present date. She admits further that complainant has written during that perio*f* several letters to her uncle, and she believes that in one or two of them he suggested that the defendant Richard U. Piper come to Washington to spend the winter, as the climate there at that season would be more favorable to his condition than that of Maine. She states further that she several times suggested that he should go to Washington for the winter, if he so desired, but he uniformly declined, saying that it was not pleasant for him in Washington. She admits that after the deed in trust to the said Thomas, hereinbefore referred to, was set aside by the court having jurisdiction in the premises, in the city of Chicago, State of Illinois, that her uncle said to her, without any suggestion on her part, that he desired her to have the property when he was gone; that he was old and liable to pass away at any time, and insisted upon making her a deed of the property situated in Washington, D. C.; that this defendant suggested to him, the said Richard U. Piper, that it could be as conveniently done by will, if he desired so to do, but he insisted upon making a deed to her for said property, and that this defendant gave back to her said uncle a lease of said property for and during the term of his natural life; which said lease is now in his possession. This was done in order to secure his support in the event of her death before his. This defendant denies that this convey-

ance was made to her for the purpose of defrauding com-
22 plainant or with the object of depriving him of the ben-
efit of any agreement between him, the said complainant, and the said Richard U. Piper concerning the disposition of the said estate; that she denies as without foundation the statement that the said Richard U. Piper acted under her influence and control in the execution and delivery of said conveyance; but, on the contrary, she states that it was his free act and deed and in accordance with his wish and desire. She denies that the property in said deed described is the home of complainant in any other sense than that he resides there under a lease from the said Richard U. Piper to him, bearing date the twentieth day of October, 1893, a copy of which is filed herewith, marked "Defendants' Exhibit No. 3," and is prayed to be read and considered as a part of this her answer. She further states that this lease has expired by limitation, and the said complainant is, as defendant is informed, and therefore states, a mere tenant by sufferance to this defendant, who is the present owner of the property, and subject to summary proceedings under the landlord and tenant proceedings in force in said District to recover possession of the property. She further states that the price agreed to be paid by the complainant for the rent of said property is much less than its actual and fair rental value; that the rent was so fixed because of the reservation of certain rooms in said house for the use and benefit of said defendant, Richard U. Piper, and wife, and also of the agreement on the part of said lessee to pay the taxes; that for some time past, to wit, for about the period of eighteen months, complainant has been using said apartments so reserved by the terms of said lease for his own uses and purposes.

Any statements made in said paragraph of said bill incon-
23 sistent with the statements herein made are untrue and are severally and specifically denied.

14th. Answering the fourteenth paragraph of said bill, this defendant denies the existence of any contract, covenant, or agreement other than the contract or lease for said premises by the said defendant, Richard U. Piper, to the complainant, as herein set out; she denies that complainant ever maintained and supported or contributed to the maintenance or support of said Richard U. Piper, or that there was any covenant or agreement to that effect. She is not informed and cannot state whether the complainant has paid all the taxes, as stated in said bill, or not, but it was his duty so to do, as provided by the terms of said lease, and she leaves him therefore to make such proof thereof as he may deem material; that she is not informed and cannot state whether the repairs on said property have been made by said complainant, as stated in said bill, or not, nor has she any belief on the subject, but leaves him to make such proof thereof as he may deem material. She denies that he contributed to the construction of said building, as stated in said paragraph of said bill, and, for further and more specific answer to said averment, refers the previous statements made in this her answer. She denies that the defendant Richard U. Piper has disabled himself from keeping or performing any contract or agreement with

complainant, or that said complainant is injured in his rights and privileges in the enjoyment of said property, or that the deed conveying the property to this defendant, Anna V. Whitney, was given for the purpose of defeating any agreement made by the defendant Richard U. Piper with the complainant or to preserve the
24–27 property for the uses and purposes set out in said bill, or that the disposition of the property made by Richard U. Piper to this defendant is inconsistent with any agreement made by the said Richard U. Piper with complainant. She will require strict proof of all the averments in said paragraph made.

Having fully answered complainant's bill of complaint, she prays to be hence dismissed, with her reasonable costs in this behalf most wrongfully incurred.

ANNA V. WHITNEY.

B. F. LEIGHTON,
Sol'r for Defendant.

DISTRICT OF COLUMBIA, *To wit:*

I, Anna V. Whitney, being first duly sworn, on oath say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my own knowledge are true; that those stated upon information and belief I believe to be true.

ANNA V. WHITNEY.

Subscribed and sworn to before me this 5th day of January, A. D. 1897.

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

* * * * * * *

28 "DEFENDANTS' EXHIBIT No. 2."

This indenture witnesseth, that the grantor, George Moore, of the city of Chicago in the county of Cook and State of Illinois, for the consideration of one dollar ($1) and for other valuable considerations, conveys and transfers to Richard U. Piper, of the town of Newport, in the State of Maine, all interest acquired by said George Moore, either individually or as trustee, by or through a certain deed from Richard U. Piper to said George Moore, dated the seventeenth day of October, A. D. 1893, and acknowledged on the eighteenth day of October A. D. 1893, before Isaac H. Fry, a notary public in and for Cook county, Illinois, and filed for record in the recorder's office for the District of Columbia, on the eighteenth day of September A. D. 1895, and recorded in Liber 2052 of the land records of said office, at folio 96, *et sequitur*, in and to the following-described real estate:

Lots numbered one hundred and thirty-nine (139), one hundred and forty (140) and one hundred and forty-one (141) in George E. Emmons' subdivision of lots in square numbered one hundred and

ninety-three (193), in the city of Washington, District of Columbia, which subdivision is duly recorded in Liber No. 12, folio 130,
29-32 of the surveyor's office of the District aforesaid, situated in the city of Washington, in the District of Columbia.

Dated this fourteenth day of July, A. D. 1896.

GEORGE MOORE. [SEAL.]

* * * * * * *

33 *Answer of Richard U. Piper.*

January 30, 1897.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY, Complainant,
vs.
ANNA V. WHITNEY, RICHARD U. PIPER, George Moore, Trustee, Defendants. } In Equity. No. 17492.

The separate answer of Richard U. Piper, one of the defendants in the above-entitled cause, to complainant's bill of complaint.

1, 2, and 3. The averments made in the first, second, and third paragraphs of complainant's bill are substantially true and are admitted, except as to the statement that the defendant is temporarily residing in the town of Newport, State of Maine. This averment is denied. This defendant states that that is his permanent home.

4. Answering the fourth paragraph of complainant's bill, defendant says that he admits that some years ago he and his then wife, Elizabeth F. Piper, left the city of Chicago and came to the
34 city of Washington, District of Columbia; that he is unable to state the precise date when such removal took place, but believes it to have been about ten years ago; that he denies that any agreement or covenant was made or entered into by and between the complainant and himself by which he was to dwell with the complainant at his home in the said city of Washington, but says that he went there, upon invitation of the complainant, to make him a visit merely, he having been solicited by the complainant at different times to visit him at Washington aforesaid. He denies that there was any contract with complainant by which, in consideration of the support, maintenance, caring for, and providing for himself and his said wife, Elizabeth F. Piper, during and for the balance of the lives of them and each of them, that he, together with his wife, Elizabeth E. Piper, or the survivor of them, would leave and convey, by will or otherwise, all of his property, real and personal, of every nature and kind, wherever situated, to and unto this complainant in fee-simple, as averred in said paragraph of said bill, and will demand strict proof thereof if it is material. As to the writing addressed to complainant, bearing date December 23, 1885, this defendant has no recollection whatever that any such writing was ever made by him, as is set up, and therefore denies that any such was made and will require of the complainant such

proof thereof as he may be able to make, nor does he have any recollection or knowledge of the will averred to have been made by him and his wife, Elizabeth F., bearing date the fourteenth of January, 1886, as stated in said paragraph of said bill, but says that he has made several wills at different times under different circumstances, but has no knowledge of the particular will referred to and will therefore demand proof of this allegation of complainant's bill if the same shall be material.

35 5th. Answering the averments of the fifth paragraph of complainant's said bill, this defendant denies that when he and his wife took up their abode with the complainant that there was any agreement with complainant that this defendant and his wife should formally adopt the said complainant as their son, or that they regarded or esteemed him as their son up to the time of the death of the said Elizabeth F. Piper, as stated in said paragraph of said bill. The date and place of the death of said Elizabeth F. Piper is correctly stated in said paragraph of said bill and is admitted. Defendant further says it may have been true during the lifetime of the said Elizabeth F. Piper that she sometimes called the complainant "Son Edwin" or may have used some such expression, but he states that such was not her common mode of addressing him, and that he was never called so by this defendant.

6th. Answering the sixth paragraph of complainant's bill, this defendant states that as the outcome of his visit to the complainant, hereinbefore mentioned, arrangements were made with the complainant to board this defendant and his wife, and in order to better accommodate the family, which was thus augmented by the presence of the defendant and his wife, he decided to build a house in the city of Washington, which should be leased to the complainant, whereby this defendant and his wife could have more commodious rooms and be better situated and enable the complainant to provide better for their comfort and accommodation, and that in pursuance of this arrangement he purchased, by deed dated June 15, 1887, of Charles B. Pearson and wife, lots one hundred and thirty-nine, one hundred and forty, and one hundred and forty-one, in

36 George E. Emmons' subdivision of lots in square one hundred and ninety-three. Said deed is duly executed and acknowledged and is recorded in Liber 1254, folio 412 *et seq.*, one of the land records of the District of Columbia, as will appear by original deed, which is filed as Exhibit One with the answer of Anna V. Whitney, defendant in this case, which is referred to and prayed to be read and considered in connection herewith. He denies that this purchase was made in pursuance of any agreement or covenant, except as herein stated, made by the complainant with himself and wife, as stated in said paragraph of said bill. He admits that a house was erected by him upon said property, but denies that it was built upon any contract, stipulation, or agreement of any kind whatever between complainant and himself, except as hereinbefore mentioned, and will require strict proof thereof. He denies that said property was to be left by will to the complainant. He denies that the complainant drew the plans for said house, but thinks it

probable he may have consulted complainant in regard to the general features of the structure. He admits that he employed an architect, who prepared the plans and specifications for the construction of said house. This defendant admits that complainant loaned to him the sum altogether of eight hundred dollars, which was expended by him in putting in steam-heating apparatus and the purchase of mantels for said house, which said sums were repaid to the complainant in full, and for which said sums of money so advanced as aforesaid this defendant holds complainant's receipts. This defendant is unable to state with accuracy when said house was completed, and, while not doubting the correctness of
37 the date named by said complainant, yet leaves him to make such proof thereof as he may deem material. He denies that he and his said wife have resided continuously in the home of the complainant since March 25, 1887. On the contrary, he says they left there some time in the summer of 1892, and that they nor either of them have resided there since.

7th. Answering the seventh paragraph of complainant's said bill, this defendant states that he has no knowledge or recollection of having made and executed a will specifically setting forth and describing the property therein named and devising said property to and unto the said complainant in trust for Elizabeth F. Piper during her lifetime, and at her death in remainder in fee to the said complainant, as therein set forth, but, if material, will require complainant to make proof thereof.

8th. Answering the eight- paragraph of complainant's said bill, this defendant denies that he received from complainant and his wife all the love and affection that was possible to be bestowed upon them, and all the care and devotion that could possibly be devoted to them, and that the relations were most happy in every respect; but, on the contrary, he states that Mrs. Hay, complainant's wife, for a long time prior to the departure of this defendant and wife for Saratoga, as stated in said bill, was disagreeable to the defendant and to his said wife, and that the children were impertinent and disrespectful in their conduct toward them to such a degree as to render their further abode there unpleasant and undesirable.
38 9th. Answering the ninth paragraph of said bill, defendant admits that he and his wife left Washington and went to Saratoga Springs, New York, some time in August, 1892. He admits that while there, some time in January, 1893, said Elizabeth F. Piper died. He admits that the complainant visited Saratoga while he and his wife were there, but denies that such visits were at his instance or of his wife or either of them. This defendant has no recollection as to the memoranda of a last will and testament alleged in said paragraph of said bill to have been made, whereby all the property of said defendant and his wife was devised to the complainant in manner and form as set out in said bill or in any other manner, and therefore denies the making and execution of the same, and will, if material, demand proof thereof. Answering further, defendant denies that he made any will on the eight- day of December, 1892, at Saratoga, as alleged in said bill, either of his own will and

accord or in pursuance of any agreement, as alleged in said paragraph, devising, as therein said, all his property to the complainant in fee-simple.

10. Answering the tenth paragraph of complainant's bill, the defendant says that he admits the death of his wife at Saratoga, and that the remains of his deceased wife were brought to the city of Washington for the purpose of interment, and he admits that the remains were brought to said city by direction of the complainant. He admits further that he was ill at the time of the death of his wife, and that his nervous system was greatly impaired at the time, and that he was unfit to accompany the remains to Washington. He ad-
39 mits that he was under the care and attendance of a physician and nurse during his illness at Saratoga, who were employed and paid by himself, and also that the hotel charges for the complainant while at Saratoga were paid by this defendant. He denies that he promised to return to Washington in a fortnight's time. He admits that he went to Chicago in company with G. S. Thomas, who was then and had been agent for certain property owned by this defendant, situated in the city of Chicago; that he was at that time weak in body and mind; that in all matters pertaining to his removal to Chicago, as aforesaid, the said Thomas controlled and dominated his will, and he admits that it was without the knowledge and consent of the complainant. He also admits that the said Thomas took possession of his effects and took him to Chicago to his, the said Thomas', own house, and that he kept him under restraint. He admits that he made a deed to the defendant George Moore in trust, to subject his property to the charge of his care and keeping during the balance of his, the defendant's, life, but that the same was made under the representation of said Thomas that the paper which he thus signed was authority to said Thomas to look after and manage his property in Chicago as his agent. He admits that said deed in trust was set aside by proceedings in the circuit court of Cook county, State of Illinois, which said proceedings, he avers, were instituted by him. He admits the date and record of said deed and the description of the property substantially as set out in said paragraph of said bill. He further admits that said deed was procured from him while his mind was enfeebled and he was incapable of making a valid deed or contract and was obtained under representations as aforesaid, but he denies that the making of said deed was in any way
40 in fraud of the rights of complainant or was in violation of any agreement ever made by himself with complainant. He states further that subsequently to said decree setting aside said conveyance the said George Moore executed and acknowledged in due form of law a release of the said deed in trust set out in said paragraph of complainant's said bill, and the same was duly made of record in Liber 2132, folio 313 *et seq.*, of the land records of the District of Columbia, the original of which is filed with the answer of the defendant Anna V. Whitney in this case, marked "Defendants' Exhibit No. 2," which he refers to and prays may be read and considered as part hereof.

11th. Answering the eleventh paragraph of complainant's bill, this defendant says that he admits that he was kept under surveillance, as stated in said paragraph, but is not aware of any attempt to correspond with him on the part of this complainant, and has no recollection of any request to complainant to bring him to Washington. He admits that the complainant called upon him at Chicago and it may have been with the purpose of having him return to Washington with him, but he denies that the accident which he received in falling downstairs, as set forth in said paragraph, made it impossible for him to be removed, but says that it was his choice at that time to remain where he then was.

12th. Answering the twelfth paragraph of complainant's bill, defendant thinks it may be true that Anna V. Whitney, his niece, at or about the time alleged, inquired of complainant of this defendant's whereabouts, and that she may have been informed that
41 he was in Chicago, and he admits that about the time alleged the said Anna V. Whitney came to see him in Chicago; but he had no knowledge of any purpose on her part of bringing him to Washington. She invited him to visit herself and her mother, his only sister, at Newport, Maine, and, accepting the invitation, in company with her he went to Newport, where they arrived on the twenty-first day of June, A. D. 1895. He thinks it may be true, as alleged, that he informed this complainant that he had gone there on a visit. He also says that this complainant informed him that he contemplated a trip to Boston some time during the summer, and that he would come down to Maine and see him if he would like for him to do so, and this defendant says that he invited him to visit him if he should come this way as he proposed; but denies that said visit was made from any suggestion on the part of this defendant that he would return to Washington with the complainant, and says while on that visit complainant urged him to convey to him the property in Washington hereinbefore described, but that he refused to do so.

13th. Answering the thirteenth paragraph of complainant's bill, this defendant admits that he has remained at the home of Miss Anna V. Whitney and her mother, his sister, and that with their permission he has now his permanent home in their family, where he has resided since June, 1895. He admits that complainant has written during that period several letters to him, suggesting that he come to Washington to spend the winter, as the climate at that season would be more favorable to his condition than that of Maine; but that he has declined his invitations, preferring to remain with his relatives in Maine. He denies that they have exercised any restraining influence over his movements in any way whatever. He admits that on the fourth day of August, 1896,
42 after the deed of trust to the said Thomas, hereinbefore referred to, was set aside by the court in the city of Chicago, State of Illinois, having jurisdiction in the premises, and after the title had been reinvested in himself by the deed of said Moore, hereinbefore referred to, marked "Exhibit 2," and annexed to the answer of said Anna V. Whitney, that he made a deed of the property situate in

Washington, District of Columbia, as set forth in said paragraph, but says that he did it without any suggestion on her part that he should do so; that it was his voluntary act and in accordance with his desire. He, further answering, says that the said Anna V. Whitney, at the time said deed was executed, gave back to him a lease of said property for and during the term of his natural life, which said lease is now in his possession, the same being done that he might have the use and income of the same so long as he should live. He denies that this conveyance was made to the said Anna V. Whitney for the purpose of defrauding complainant or with the object of depriving him of the benefit of any agreement between the said complainant and this defendant concerning the disposition of the said estate. He denies that this property in said deed described is the home of complainant in any other sense than that he resides there under a lease from this defendant to him, bearing date the twentieth day of October, 1893, a copy of which is filed with the answer of Anna V. Whitney, defendant in this case, marked "Defendants' Exhibit No. 3," which he refers to and prays may be read and considered a part of this answer. He further states that this lease has expired by limitation, and that the said complainant is, as defendant is informed, and therefore states, a mere tenant at sufferance and subject to
43 summary proceedings under the landlord and tenant proceedings in force in said District to recover possession of the property. He further states that the price agreed to be paid for the rent of said property is much less than its actual fair rental value; that the rent was so fixed because of the reservation of certain rooms in said house for the use of this defendant and his wife, and also of the agreement on the part of said lessee to pay the taxes; and he is informed and believes, and therefore states upon information and belief, that for about eighteen months last past complainant has been using said apartments so reserved by the terms of said lease for his own uses and purposes, and that any statements made in said paragraph of said bill inconsistent with the statements herein made he believes to be untrue, and are severally and specifically denied.

14. Answering the fourteenth paragraph of said bill, the defendant denies the existence of any contract, covenant, or agreement other than the contract or lease of said premises by this defendant to the complainant as herein set out. He denies that complainant ever maintained or supported or contributed to the maintenance or support of himself or his said wife, or that there was any covenant or agreement to that effect. He is not informed and cannot state whether the complainant has paid all the taxes as stated in said bill or not, but it was his duty so to do, and provided by the terms of said lease, and he leaves him therefore to make such proof thereof as he may deem material. He is not informed and cannot state whether the repairs on said property have been made by said complainant as stated in said bill or not, nor has he any belief
44 on the subject, but leaves him to make such proof thereof as he may deem material. He denies that he contributed to the

construction of said building, as stated in said paragraph of said bill, and for further and more specific answer to said averment refers to the previous statements made in this his answer. He denies that he has disabled himself from keeping or performing any contract or agreement with complainant, or that said complainant is injured in his rights and privileges in the enjoyment of said property, or that the deed conveying the property to said Anna V. Whitney was given for the purpose of defeating any agreement made by this defendant with the complainant, or to preserve the property for the uses and purposes set out in said bill, or that the disposition of the property made by this defendant is inconsistent with any agreement made by him with complainant. He will require strict proof of all the averments in said paragraph made.

Having fully answered complainant's bill of complaint, he prays hence to be dismissed, with his reasonable costs in this behalf most wrongfully incurred.

R. U. PIPER.

STATE OF MAINE, *Penobscot*, } ss:

I, Richard U. Piper, being first duly sworn, on oath say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my own knowledge are true; that those stated upon information and belief I believe to be true.

R. U. PIPER.

Subscribed and sworn to before me this 27th day of January, A. D. 1897.

[SEAL.] CHARLES H. MORRILL,
Notary Public.

45 *Answer of Defendant George Moore.*

Filed January 28, 1897.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY
vs.
ANNA V. WHITNEY, RICHARD U. PIPER, and George Moore, Trustee. } In Equity. No. 17942.

The separate answer of George Moore, one of the defendants in the above-entitled cause, to so much and such parts of complainant's bill of complaint as he is advised is material for him to make answer to, answering, says:

1, 2, & 3. That the averments made in the first, second, and third paragraphs of complainant's bill are, as this defendant is informed and believes, substantially true, and are admitted.

4, 5, 6, 7, 8, & 9. Answering the averments made in the fourth, fifth, sixth, seventh, eighth, and ninth paragraphs of said bill, this

defendant says he has no knowledge as to the allegations made in said paragraphs of said bill, nor has he any information such as will justify a reasonable belief as to the truth of said averments. He therefore denies each and severally said allegations in said paragraphs made, and will require of the complainant strict proof thereof.

10. Answering the tenth paragraph of said bill, this defendant admits the execution and delivery of the deed in trust bearing date the 17th of October, 1893, by Richard U. Piper to this de-
46 fendant, substantially as set out in said paragraph. He admits, further, that it was made for the purpose of securing one G. S. Thomas for the maintenance and support of the said Richard U. Piper for his life. He also admits that proceedings were *substantially* instituted in the circuit court for Cook county, State of Illinois, by the said Richard U. Piper to set aside said conveyance. He admits, also, that a decree was passed in said case setting said conveyance aside, but he states that an appeal was taken to the court of appeals of the State of Illinois, and that said case is still pending and not yet finally determined. He states, further, that he executed and delivered unto said Richard U. Piper in due form of law a release of said deed of trust so far as it related to the property situated in the District of Columbia. Respecting the other averments made in said paragraph of said bill this defendant has no knowledge, nor has he sufficient information upon which to base a reasonable belief as to the truth of the same. He therefore *admits* them each and severally, and will demand strict proof thereof.

11, 12, 13, & 14. Answering the averments made in the eleventh, twelfth, thirteenth, and fourteenth paragraphs of complainant's said bill, this defendant has no knowledge, nor has he sufficient information upon which to base a belief as to the truth of said averments. He therefore denies them each and severally, and will demand strict proof thereof.

Having fully answered complainant's said bill, this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully incurred.

GEORGE MOORE.

B. F. LEIGHTON,
Sol'r for Defendants.

47 COUNTY OF COOK, } *To wit:*
State of Illinois, }

I, George Moore, being first duly sworn, on oath say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my own knowledge are true and those stated upon information and belief I believe to be true.

GEORGE MOORE.

Subscribed and sworn to before me this 26th day of January, A. D. 1897.

[SEAL.] JOHN F. HOLLAND,
Notary Public in and for Cook County, Illinois.

Replication.

Filed February 9, 1897.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY, Complainant,
vs.
ANNA V. WHITNEY, RICHARD U. PIPER, and George Moore, Trustees, Defendants. } Equity. No. 17942.

The complainant hereby joins issue with the defendants upon the answers by them filed herein.

J. M. WILSON,
A. A. HOEHLING, JR.,
Solicitors for Complainant.

48 *Interrogatories Propounded to Richard U. Piper, &c.*

Filed February 24, 1897.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY, Complainant,
vs.
ANNA V. WHITNEY ET AL., Defendants. } No. 16942. Equity.

Interrogatories to be propounded to Richard U. Piper, a witness called on behalf of the defendants in the above-entitled cause.

Int. 1. State your name, occupation, place of residence, and whether or not you are the same Richard U. Piper made defendant in the above-entitled cause.

Int. 2. State whether or not you are acquainted with the parties to the above-entitled cause, and how long you have known each of them.

Int. 3. State whether or not you have ever lived in the city of Washington; and if to this interrogatory your answer is yea, state when you came to that city, under what circumstances, and where you resided, and with whom while there.

Int. 4. State whether or not you ever resided with the complainant in the above-entitled cause; and, if so, when and under what circumstances you commenced to live with him; whether it was in pursuance of any contract or agreement between you and the said Hay, and whether such agreement was in writing; and, if in writing, whether or not you have possession of said contract; and, if not, who has, and whether or not you have a copy of the same.

49 If you have possession of such contract or a copy thereof, produce the same, identify it, and file it as part of your depo-

sition. If, however, you state that there was a contract, but that it was not in writing, state fully and explicitly what the terms of such contract were, when it was made, and whether any person or persons were present when it was made, except the parties thereto and, if so, give their names and places of residence.

Int. 5. If in answer to the foregoing interrogatories you state that you did reside in Washington and with the complainant, state whether or not during such time you were engaged in any employment or occupation, and, if so, what; what your age and physical condition were at that time, and if you were married, give the name of your wife.

Int. 6. If in answer to the foregoing interrogatory you state that there was a contract or agreement between yourself and the complainant in this cause, state whether or not the complainant did and performed all the things agreed by him to be done or performed, and, if not, state fully in what particulars complainant failed to keep his part of the agreement.

Int. 7. If in answer to the foregoing interrogatories you state that you came to Washington in 1887, state whether or not your coming here was in pursuance of any agreement or covenant to reside with the complainant and to make your home with him in said city.

Int. 8. If you state that you resided with the complainant in the city of Washington, state who owned the house where you resided with complainant during all the time you remained there and whether or not you paid complainant for any board or maintenance furnished by him during your stay with him and in what way, and, if any payment or payments were made, whether in pursuance of any agreement with complainant and whether or not you are indebted to him in any sum for board, maintenance, care, or otherwise.

Int. 9. Do you recollect anything as to an agreement to convey your property to complainant? If yea, was such agreement in writing? If yea, what became of it? Is it now in existence? If so, produce and file it with your deposition. If not, state what became of it.

Int. 10. Do you know anything as to the will alleged to have been made by yourself and your late wife, Elizabeth F. Piper, dated on or about January 14, 1886? If yea, what and whether or not you devised by it your property to complainant? If yea, how you came to do so?

Int. 11. If your answer to the last interrogatory be yea, state how you came to make such will, at whose instance, and under what circumstances, and who prepared the same and what became of it.

Int. 12. State whether or not in March, 1887, or at any other time, yourself and your late wife adopted the complainant as your son; whether it was your custom to address him as such or that of your wife. If in answer to this question you state that it was your custom and that of your wife so to address him, state how it came about and whether there was any formal agreement in that regard, and, if so, what.

51 Int. 13. State whether or not you built the house upon the lots described in the sixth paragraph of complainant's bill. If in answer to this interrogatory you say you did, state how you came to build it and whether the same was built in pursuance of an agreement or contract with complainant.

Int. 14. State who furnished the money to build said house.

Int. 15. State whether or not said house was built for complainant or how otherwise, and whether it was built by you or by complainant, and whether or not complainant had anything, and what, to do with its construction.

Int. 16. State who furnished the money to purchase the lots described in complainant's bill, on which said houses were erected, and whether or not any part thereof, and, if any, how much, was furnished by complainant.

Int. 17. State who drew the plans and specifications for said house and whether the complainant had anything, and what, to do therewith.

Int. 18. State whether or not complainant contributed anything towards the cost of said house, and, if yea, how much, and how it happened that he contributed anything to the cost thereof, and whether or not he has been repaid for the money advanced by him. If, in answer to this question, you say he has been repaid, state whether or not you have his receipt or other voucher for such payment, and, if so, produce and file same or account for its absence.

Int. 19. State when said house was completed and ready for occupation.

Int. 20. State whether you went into occupancy of said
52 house; if yea, when, and how long you remained there.

Int. 21. If you say you lived in said house and premises in litigation, state when you departed therefrom and under what circumstances, and why.

Int. 22. Who has been in occupancy of said house since you left it?

Int. 23. If, in answer to the last interrogatory, you say that complainant has occupied said house, state in what capacity or character he has occupied it, whether in pursuance of any agreement with you or not, and, if so, what the said agreement was, and annex to your deposition a copy of the same if available to you.

Int. 24. If, in answer to the last interrogatory, you state that complainant has been in occupancy of said house as your tenant, state how the lease came to be made.

Int. 25. State whether or not you made a will dated on or about July 1, 1888, by which you devised the property in controversy as set out in the seventh paragraph of complainant's bill. If, in answer to this question, you say you did, state how it came about, where the will now is, who prepared the same, and any other fact in connection therewith that may be material.

Int. 26. What as to the character of complainant's treatment of yourself and wife *and* during your residence with him in the city of Washington.

Int. 27. What as to the conduct of complainant's wife and
53 children towards you and your wife while you resided with complainant. State fully as to this.

Int. 28. State when you left Washington, and why.

Int. 29. If, in answer to the last interrogatory, you say that you left Washington in August of 1892, state where you went, and whether or not you ever returned to Washington thereafter.

Int. 30. If, in answer to the last interrogatory, you state that you went to Saratoga, New York, state how long you remained there, whether your wife accompanied you, and whether or not complainant ever visited you while there; and, if yea, how frequently, and whether or not at your request or that of your wife.

Int 31. State whether or not before your departure for Saratoga you and your wife left a memorandum of a last will and testament, whereby you were to devise all the rest of your estate unto said complainant.

Int. 32. If to the last interrogatory you say yea, state how you came to do this, the circumstances in connection therewith, whether it was done voluntarily or at the suggestion of any one, and if at some one's suggestion, state whose.

Int. 33. State whether or not you did, on or about the 8th day of December, 1892, while at Saratoga, make and execute a will devising all of your property to complainant. If to this interrogatory you say yea, state how you came to do this, who was present when it was done, what was your physical and mental condition at the time; whether you were ill, and, if so, from what cause; whether or not complainant was present when said will was executed,
54 who prepared the same, and whether or not complainant, when visiting you at any time at Saratoga, requested you to make a will in his behalf. If you say he did, state fully the circumstances.

Int. 34. State whether or not your wife died while at Saratoga. If you say she did, state when.

Int. 35. If you say that your wife died at Saratoga, state whether or not complainant was present at her death, and who took charge of her body after her death, and where she was interred.

Int. 36. If, in answer to the last question, you say that complainant was at Saratoga at the time named, state whether or not it was at your request or that of your wife that he was there.

Int. 37. State how long you remained at Saratoga after the death of your wife, and whether or not complainant came to Saratoga after the death of your wife to get you to come to Washington.

Int. 38. If to this interrogatory you say yea, state whether or not you came and why; also state whether or not complainant's visit to Saratoga was of his own volition or at your request.

Int. 39. State when you left Saratoga and under what circumstances, what your condition of health was, of body and mind, and whether any one accompanied you.

Int. 40. If, in answer to the last interrogatory, you say that one G. S. Thomas accompanied you from Saratoga to Chicago, state who he is, what his relations to you were, and how it came about that

you went to Chicago with him, and how long you remained
55 in Chicago.

Int. 41. State with whom you resided while there, and what was your physical and mental condition at that time.

Int. 42. State whether or not you were held in restraint while in Chicago, and, if so, by whom?

Int. 43. State whether the deed in trust made to George Moore, described in the tenth paragraph of complainant's bill, was in violation of any agreement made and existing between you and complainant, and, if so, what? or in fraud of any of his rights, and, if so, how and in what manner?

Int. 44. State whether or not complainant sent for you during your stay in Chicago. If yea, by whom, and at whose request or instance?

Int. 45. State when you left Chicago, and where you went after leaving that place.

Int. 46. If in answer to the last interrogatory you say you went to Maine, state how long you there resided, with whom, and how or for what reason you happened to go there.

Int. 47. State whether or not upon your departure from Chicago you announced to complainant that you had gone to Newport for the summer.

Int. 48. State whether or not complainant visited you at Newport. If you say he did, state whether it was at your request or of plaintiff's own volition, and what the object of such visit was.

Int. 49. State whether or not the defendant Anna V. Whit-
56 ney is related to you, and if you say she is, state how.

Int. 50. State how it came about that you made the conveyance of the property which is the subject of this litigation unto the defendant Anna V. Whitney.

Int. 51. State for what purpose said conveyance was made.

Int. 52. State whether or not it was your habit to correspond with the defendant Miss Whitney or her family, and, if yea, how frequently.

Int. 53. State whether or not you acquainted her or them with your condition while in Chicago, and if you say you did not, state why.

Int. 54. State whether or not the complainant has paid the taxes upon the property in controversy from 1888 to the present time. If you say he has or ought to have done so, state why.

Int. 55. State who has kept the premises in repair during said period. If you say complainant has, state whether he has done so in pursuance of any agreement between yourself and him, and, if so, what.

Int. 56. State why you have not come to Washington, and whether or not you are under any obligation to live with the complainant, and, if so, what, and how it came about, and why you have not kept such obligation.

Int. 57. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the

subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

57 *Answers to Interrogatories Propounded to Defendant Richard U. Piper.*

Answers of the above-named Richard U. Piper to the foregoing interrogatories, given, as aforesaid, in the presence of Edwin B. Hay, Esq., the complainant, and Charles A. Bailey, Esq., of counsel for defendant.

Ans. to Int. 1. Richard U. Piper. I have no occupation now. I was educated as a physician and spent a good deal of my time as an expert witness in cases in court; Newport, Maine. I suppose I am.

Ans. to Int. 2. I am. I have been acquainted with Mr. Hay ten years and with Miss Whitney about eight.

Ans. to Int. 3. Yes, sir; about ten years since. I came there first on a visit to Mr. Hay's family and afterwards boarded with them.

Ans. to Int. 4. Just as I said. I came there first on a visit, and that extended to boarding with them. There was no agreement of the kind, sir; came there in the first place voluntarily; no, sir. I can give no names or places of residence, because there was no such contract, either written or oral.

Ans. to Int. 5. I was. I was engaged in the expert business in the courts. I was about seventy, and my physical condition was pretty good. I was married. My wife is dead. Her name was Elizabeth F. Piper.

Ans. to Int. 6. I said there was no contract, but first I
58 boarded with him. I must—I don't know, but I have got to *to* modify that. I mean I lived with him and boarded with him, with a verbal agreement to pay my board, and he was to pay me for occupying my house; he should occupy my house. I built a house, and he was to occupy it and pay me in board; pay the insurance, pay the taxes, keep things in repair, and for furnishing me good and sufficient board; no, sir; he did not. Well, his agreement was that I have sufficient fire and heat in my room, which I didn't. I had to buy coal and a stove to keep myself warm, one thing. Another thing, the food wasn't what it should have been; quite the reverse.

Ans. to Int. 7. No, sir; there was no such agreement and no such covenant.

Ans. to Int. 8. First, I suppose, he owned the house himself. I was on a visit with him. Afterwards, as I said, I built a house and owned it myself. I paid him some money; paid him in the occupation of my house; no; not indebted to him, because it was paid, as I said before.

Ans. to Int. 9. No, sir; there was no such agreement, to my knowledge. I never made any such agreement. If there is any

such agreement, it must be forged. You know it is very easy for an expert penman, like the complainant, to forge a paper. I have had to do with a good many forged papers done that way. It is impossible to tell that they were forged. I have had the man himself make the mistake of his own signature. It has been my business largely to tell such things, and I have found that a very simple thing to forge a paper.

Ans. to Int. 10. I don't know, sir. I don't know any such will. I didn't do any such thing. Any such paper—it must be forged paper. I didn't do any such thing. Why bring up that—

59 up these papers, when they have all been destroyed or superseded by another will made two years hence? What have these to do with the case? It seems a piece of folly to put them in a case when there is no authority whatsoever. I have a right to make as many wills as I please, certainly. I don't know any such thing, sir. I made quite a number of wills, and, of course, I can't identify them; pick out one from another, but they have all been superseded by another will made about two years hence.

Ans. to Int. 11. I never made any such will; not in my memory. As I said before, I made a number of wills. I couldn't pick out one and identify them at this distance, but I am very sure I didn't make this one, sure as I can be under the circumstances.

Ans. to Int. 12. Simply nonsense the question is; no such thing. We never adopted him—never thought of adopting him. It was not my custom to address him as such; very rarely, if ever, said, "My son Edwin." She sometimes, not unfrequently, I think, addressed him so; but mere term of kindness; she believed in him. There was no formal agreement, nor was it my custom to address him so. My wife sometimes called him "Son Edwin." That was when she believed in his honesty and truthfulness; she wouldn't now if she was alive.

Ans. to Int. 13. I came to build it, sir; I did build it and paid every dollar. Nobody paid a single cent else on it. I built because I thought I would like to have some property in Washington, might be a good investment, and perhaps I might like to live there some time, but there was no agreement whatsoever. If he says there is, he says what is a lie.

Ans. to Int. 14. I furnished it, sir; every dollar of it. I had it on deposit in the Central national bank there; drew checks on that bank; paid the bills, all of them.

60 Ans. to Int. 15. It was not, sir. It was built by me and not built for complainant; he had nothing whatever to do with it, not even to counseling about building it. I furnished all the money and all the means, employed an architect, and paid him five hundred dollars for doing it.

Ans. to Int. 16. I furnished them, every single cent of them. Nothing was furnished by complainant whatsoever; so far as the building of the house was concerned I am speaking now. I paid for the lots, sir; paid for them out of deposit in the Central national bank. I had the money and paid for them, paid the cash for them Nobody had anything else to do with paying for them whatsoever

Whoever says so says what is untrue, if any one says so; I don't know as they do.

Ans. to Int. 17. The architect, Mr. Mullet, I think. Not a thing; I consulted Mullet on every single point, every minute point of change, every single thing. He said that I must come to him in case I wanted change. There was something put on the house that I didn't like and I had to consult him to get it off. It was what they called finial.

Ans. to Int. 18. Contributed nothing to the cost of the house; appendages of the house, the furnace and the mantelpieces—he loaned me some money, some six or eight hundred dollars, but that has been all repaid, and I have the receipts. I have the receipts and will annex them to this deposition.

(Receipts annexed, marked Defendants' Exhibits A and B.)

Ans. to Int. 19. About nine years since, I think.

Ans. to Int. 20. I did. I reserved for myself five rooms for my exclusive use, and they had the others, and I boarded with them. They had the rest of the house. About five years, I think.

61 Let me remark here, if I may, my memory for dates is very poor and always has been, consequently I may make some mistake in the dates.

Ans. to Int. 21. I forget the date so—about five years since, I think. It was a question of health; on account of my health; on account of the disagreeable surroundings in the house and in the family; and went to Saratoga.

Ans. to Int. 22. Hay; the complainant, Mr. Hay.

Ans. to Int. 23. He has occupied it on a lease. We have a lease. We furnish a copy of it, and will annex same to this deposition.

(Copy of lease annexed, marked Defendants' Exhibit C.)

Ans. to Int. 24. I think my real-estate agent in Washington—well, Chicago—made it, G. S. Thomas.

Ans. to Int. 25. I don't think I did, sir. I don't know of doing any such thing. I should be inclined to think it was forgery if there was any such will. Still, I made so many wills that I cannot recall very distinctly the date. There was no such will.

Ans. to Int. 26. It was kindly enough so far as his personal conduct with us. Like Byron's pirate, "he was the mildest mannered man that ever cut a throat or sunk a ship." He was all the time trying to cheat me, talking about his love and affection for me while he was planning to cheat me out of my property.

Ans. to Int. 27. Very uncomfortable and disagreeable; so much so that I called her a quarrelsome woman. I couldn't propose anything that she wouldn't fight over it, and frequently the ladies didn't speak together. We got so after a while it was almost impossible for us to stay there, and I made up my mind before I went away the necessity of a change. I couldn't propose anything to the woman she wouldn't fight me on it.

62 Ans. to Int. 28. As I said before, about five years since. I went to Saratoga on account—as I said before, on account of

my health, and partly on account of the disagreeable surroundings.

Ans. to Int. 29. I went to—Oh, dear, my memory—went to Saratoga; did not return to Washington thereafter.

Ans. to Int. 30. I stayed there four or five—between some four or five months. My wife did accompany me. He certainly came there. I don't know whether you call it visiting or not; at neither of our request; he came of his own proper notion. I don't remember of his being there more than once or twice.

Ans. to Int. 31. I know—I am very sure, sir, we did not. I am positive we did not. I know of no reason for leaving a memorandum. We could write a will without leaving a memorandum. If there is anything of the kind it must be an adroit forgery, I think.

Ans. to Int. 32. I have answered that, sir.

Ans. to Int. 33. As I said before, my memory of those things, of the wills, I made so many of them, — somewhat obscure. I might possibly have done it. At that time I was very much out of health; so much so that I could scarcely sit up, and this man was round me trying to induce me to make a will and give him my property, and I may possibly have signed a will of that kind. He took me in his arms one time and clasped me to his breast. He came to the room where I was—vacant room—I was standing there—took me in his arms around me and clasped me to his breast. "You must act with me, Doctor, you must act with me." I understood that very well, and very likely I might have acted with him if
63 he hadn't done so with me. I began to suspect him then very strongly, a manifestation which I was not accustomed to. I just mentioned that and mentioned the manifestation which he made in connection with it. It might have been the will which he had or some other document which he was trying to get me to sign, but I was in such a state of health any document at that time would have been illegal, because I was not competent. My health and my mind was impaired very much. He was with me and around me, he and the other robber, Mr. G. S. Thomas.

Ans. to Int. 34. She did, sir; about—I can't give you the date.

Ans. to Int. 35. He was not present at her death. He took charge of her body. It was interred in Washington.

Ans. to Int. 36. He was not at the request of either of us. As I said before, I had begun to suspect him and I didn't invite him to come there. He came of his own free, voluntary will, pushed himself in to get me to sign papers to sign away my property.

Ans. to Int. 37. A few days, sir. He did come there, sir. He came, stating that he came to get me to go to Washington with him, endeavoring to get round me and come under their influence.

Ans. to Int. 38. Oh, no; I didn't go back to Washington. Certainly it was his own volition. He came there by his own proper volition, apparently to get what little money I had, because he was always trying to get me to sign a paper—a will.

Ans. to Int. 39. I left about—well, I forget dates so I can't make the date—about ten years ago, I think; no, about five years ago;

yes, shortly after the death of my wife, with G. S. Thomas.
64 My health was very poor, and I was very much out in my mind—very much troubled. G. S. Thomas accompanied me.

Ans. to Int. 40. He is a real-estate agent; had care of my real estate for some few years. Why, he invited me to go; said he would take care of my property the same as he had done, and give me a very doubtful character of the one that was trying to get the property away from me; remained in Chicago about two years.

Ans. to Int. 41. G. S. Thomas' family. Very much impaired.

Ans. to Int. 42. I was; by Thomas.

Ans. to Int. 43. It was not. He had no claim on it whatsoever. Not in the least, sir. I suppose and I did have full possession of the property. He had no claim on it whatsoever; only these fictitious ones which he brings about here, a will being made for him, etc., except the lease heretofore mentioned.

Ans. to Int. 44. He came there once and invited me to go to Washington with him; came at his own instance.

Ans. to Int. 45. Left about two years hence; came to Newport, Maine.

Ans. to Int. 46. Went there because my sister, my only sister, was living there. She invited me to come and make a visit and I desired to get amongst my own friends and family; resided there ever since.

Ans. to Int. 47. I don't think I did, sir. I wrote very few letters for the last number of years. My wife has written all my letters. She might have said so; couldn't have written it, of course.

Ans. to Int. 48. He did. He came of his own proper instance.
He came, as I think, to get me out of my property, for he asked
65 me to sign a paper conveying it to him directly, — so many words, urging me to do so, and said he would take good care of it and take good care of me, and that I should have very comfortable living there.

Ans. to Int. 49. My niece, the daughter of my sister.

Ans. to Int. 50. Made it out of my own proper notion and desire, mainly to make some acknowledgment of the care she has taken of me. She has been more than a daughter to me. I never walk out scarcely without leaning on her arm, and she has taken all the care of me these two years. Hers was care and not talk about care.

Ans. to Int. 51. For her sole inheritance; sole property.

Ans. to Int. 52. Why, my wife and sister corresponded constantly. I wrote very few friendly letters the last part of my years—the last years—but I wrote occasionally; but their correspondence was frequent.

Ans. to Int. 53. I wrote letters explaining, but I think they never were received.

Ans. to Int. 54. I don't know that he has, but he ought to have done so, because that was in accordance with the agreement, he should pay the taxes when he occupied the house.

Ans. to Int. 55. Same agreement; when he became a tenant he

should keep the repairs, and I presume he has, but I don't know. He ought to have done so anyhow.

Ans. to Int. 56. I have no desire to go to Washington, because the surroundings there are so disagreeable. I am not under the least obligation to live with the complainant, while he is under a good deal of obligation to me in occupying my house without paying me anything more than a bagatelle of rent for five or six years.

Ans. to Int. 57. I cannot.

66 *Cross-interrogatories Propounded by Edwin B. Hay, Esq., Complainant.*

X Int. 1. When did you go to Washington to live with the complainant? A. About ten years ago. I must be pardoned with regard to dates, for I have a bad memory for dates, and it is not an uncommon thing.

X Int. 2. How did you come to do so? A. Well, invited to make them a visit. I met him, Mr. Hay, in the way of business in the United States court; got acquainted with him and he invited me to come and make them a visit in Washington.

X Int. 3. Did you return to Chicago after making that visit? A. No; I think not.

X Int. 4. Where did you reside prior to residing in Washington? A. Chicago.

X Int. 5. With whom did you reside? A. I resided in my own proper house; hired apartments.

X Int. 6. How long have you resided in Chicago prior to going to Washington? A. Oh, I can't tell you how long. I forget dates.

X Int. 7. Where did you reside prior to residing in Chicago? A. I can't follow my life right through.

X Int. 8. Had you any relatives living when you went to Chicago? A. Oh, yes; two or three brothers.

X Int. 9. Did you ever at any time visit any of them? A. We were separated in such a way that I didn't visit them very often. Yes; I visited the youngest one two or three times.

67 X Int. 10. Did any of them ever visit you? A. Oh, yes; spent nights and days with me. My youngest brother was there a week at a time. My oldest brother was a large business man—wholesale dealer; didn't visit much.

X Int. 11. Did you have any communication by correspondence with any of them? A. Oh, yes.

X Int. 12. With whom especially? A. With my brothers—my brothers and my brother-in-law in Wisconsin; had correspondence with him; married my sister; my wife.

X Int. 13. Did you write the letters yourself? A. Did I write the letters myself? I wrote some of them, some of them not. Some of them I had a secretary—whatever it was.

X Int. 14. Who served as your amanuensis? A. My sister and my wife.

X Int. 15. Did your wife write your letters for you? A. Yes; generally.

X Int. 16. What sister ever wrote any for you? A. My sister Victoria; also my sister Sarah.

X Int. 17. Were your sisters Victoria and Sarah in Chicago? A. No; not then; come there on a visit not unfrequently.

X Int. 18. Did you see the letters after they were written by your wife generally, or did she read them to you? A. Oh, hardly ever read over her letters. I guess, sometimes I read them, sometimes I did not.

X Int. 19. Do you own a typewriting machine? A. Yes.

X Int. 20. How long have you had it? A. A number of years.

68 X Int. 21. Did you have it in Chicago? A. Yes; I think so. Let me see. Did I? I am not sure; have to think a moment. I don't know whether I did or not; guess I did, though.

X Int. 22. Didn't you bring it with you to Washington from Chicago? A. Yes; I believe so.

X Int. 23. Who wrote on that—you or your wife? A. I did.

X Int. 24. Did you ever know Judge Charles H. Wood, 126 La Salle street, Chicago? A. Yes.

X Int. 25. Who is Judge Wood? A. He is dead, sir; dead a number of years. One of our court judges in Chicago.

X Int. 26. Did you deposit with him a will on or about January 14, 1886, prior to going to California? A. Not to my knowledge; don't remember of doing such a thing.

X Int. 27. Did you ever regard the complainant in the light of your son, in any way whatever, prior to leaving Chicago for California? A. No, sir; never regarded him as a son.

X Int. 26. Was he, prior to that time, addressed so by you? A. I don't remember positively; not often, I am very sure, though.

X Int. 29. Did your wife address him as a son prior to that time? A. I don't know, sir; don't think she did, though.

X Int. 30. Did you and your wife urge upon the complainant that a visit to him would be most acceptable, as you had to

69 leave Chicago on account of your failing health at that time? A. No; I don't think so. I don't know anything about it.

X Int. 31. Did you come to the complainant's home in Washington at that time? A. I came to the complainant's home on a visit at a certain time; I can't fix the date.

X Int. 32. Did you return to Chicago after that visit? A. After what visit?

X Int. 33. After that first visit. A. To Washington? Not if my memory serves me; I think not.

X Int. 34. Did you not propose to the complainant that you would buy a lot and build a house in which to accommodate two families if he would permit you to come and live with him? A. Never made any such proposition. I built a house and let it to him.

X Int. 35. Didn't you complain of the size of the house in which the complainant lived? A. Complain of the size of the house? Couldn't live in it; it wasn't large enough for us.

X Int. 36. How long did you live in the complainant's house prior to going into the house which you built? A. A year or so—year and a half.

X Int. 37. Did you ever pay to complainant any compensation whatever? A. Yes; I paid some money.

X Int. 36. Will you please state how much you paid? A. I don't remember.

X Int. 39. To whom did you pay it? A. I gave Mr. Hay—I don't know; Mrs. Hay, I guess—I don't know; I don't remember.

70 X Int. 40. How much did you pay, Doctor? A. I don't remember that, either.

X Int. 41. What did you pay it for? A. Board.

X Int. 42. How often did you pay it? A. I don't remember.

X Int. 43. Did you ever pay any compensation at all? A. I did; I know I paid some; I remember very distinctly; some things I don't remember; I do remember that.

X Int. 44. Did you not, then, in the presence—that is, in the home, in Washington, when speaking of living with the complainant—in the presence of your wife, the wife of the complainant, and Mrs. Anna D. Kearfort, enter into a covenant and contract, calling Heaven to witness, that in consideration of the complainant caring for you and your wife and you living with the complainant and his wife, that you would regard and adopt him and his wife as your children, and would make a will leaving to them all your property upon the death of yourself and your wife? No; emphatically, no. The whole thing is a fiction; I never did any such thing as that. It is very well manufactured, and that is all it is. I never made any such agreement, never thought of any such agreement. I must have been asleep.

X Int. 46. Did not your wife then and there ratify this covenant and agree to do the same thing should she survive you? A. I just said the whole thing is a fiction. No; she did not.

71 X Int. 47. Who secured the lot for you upon which the house was built? A. I don't know anything about that. I paid the money for it and got the deed.

X Int. 48. Did not the complainant draw the rough draft of the house and submit the same to you prior to handing them to the architect? A. Certainly not. The architect talked the whole matter over with me and told me about building the house, all about it, and told me that I was obliged to build it after I made the talk with him. I talked about not going on with it. He said to me I must go on with it; I had agreed to with him, and he drew the whole of the plans, every one of them.

X Int. 49. Who secured the architect for you? A. Oh, I don't know anything about that.

X Int. 50. Who suggested the contractor? A. I don't know that, either. I believe the architect. I know the architect suggested the contractor.

X Int. 51. Did you never tell the architect that you were build-

ing that house for your children, Edwin and Florence? A. No, sir.

X Int. 52. Did you not tell the contractor that "Edwin is my son, and I am building this house for him"? A. Never. He is an Irishman, like the complainant.

X Int. 53. That does not answer the question. A. Yes. I said never; never told him any such thing.

X Int. 54. Did you not tell the circle of friends around and about us that you were building the house for the complainant, and that you were to live there together with him? A. I never told them any such thing, and he better ask them, I think.

X Int. 55. Did you insist that your part of the covenant be kept at once by making a will in favor of the complainant? A.
72 No, sir. I have said over and over again that I don't remember a will that I made; but a will is always subject to change if I see reason. If I make a will in favor of a party because of my good will toward them and they turn out to be bad, of course I can alter it; have a right to.

X Int. 56. Did the complainant not keep his covenant with you in every respect? A. No; he did not. Love and affection—if love and affection means being suave in manner towards you, and then going about to cheat you out of your property; not much love and affection in that; not manifest very much, either.

X Int. 57. Were you and your wife not treated with love and affection by the complainant? A. We were not, sir; almost have an open fight with the wife; several times used words, and coarse words she used.

X Int. 58. The question was, Were you and your wife not treated with love and affection by the complainant? A. I said no. Our relations were very much strained.

X Int. 59. Will you please state one incident or instance in your life where the complainant has not treated you with the same amount of love that he could have treated a father? A. By no means. His wife's conduct toward me was very disagreeable, very uncomfortable, and very contentious.

X Int. 60. Haven't you more than once by words and by writing expressed your love for this complainant? A. It is very possible. He was very suave in manner and kindly apparently; but I found out facts that led me to suspect him strongly beyond all these that are brought out here.

X Int. 61. Suspect him of what, Doctor? A. Of dishonesty. Smiling and smiling and being—and even putting on the livery of the court of heaven to serve the devil in.

73 X Int. 62. You have stated generally the wearing of this livery of the court. Can you state any instance particularly in which he has demonstrated the facts of serving the devil in any way whatever? A. I can bring a number. One, the collection of the bill on the Sharon estate. I got him, wrote him, to collect it, and he said he couldn't get it, kept claiming. I wrote Mr. Newland, the agent, and he said it was all ready for me; wrote me back that that man Hay had been talking with him about it and he

didn't pay him over. Why didn't he? is the question. That is one.

X Int. 63. Any more, Doctor? A. Oh, I can't think them over; so many of them.

X Int. 64. Then you call the failure of an attorney to collect an account for his client, when it was not possible to do so at the time, serving the devil? A. I make no general—I make no general complaint of the kind. I only brought one single case where I employed a man to do the work and he kept saying it couldn't be done. He kept acting how not to do it rather than to do it, and when I wrote the party he told me he was all ready to do it.

X Int. 65. Who collected it? A. I collected it. It came through the bank, First national bank.

X Int. 66. Didn't G. S. Thomas collect it for you? A. No; he didn't collect it for me. He wrote one letter.

X Int. 67. He got it, though, didn't he? A. No; it came to me direct.

X Int. 68. He got it since, didn't he? A. Well, some of it as well as others. Yes; he did. He was the cunningest of the two.

74 X Int. 69. Did the complainant call you and wife mother and father Piper? A. Not that I know of; not me; he might have sometimes. I think he did call my wife sometimes, not always, though, by any means, kindly expressions.

X Int. 70. Didn't the children of the complainant call you grandpa and your wife grandma? A. No, sir; not that I know of. Children were not bad children. They were very easy to control, I think.

X Int. 71. Did you not always speak of the complainant as son Edwin? A. No, sir; I did not.

X Int. 72. Prior to leaving your home in 1892, on the day before you started, did you make a will leaving all your estate, except a few bequests, to this complainant on account of your love for him and his kind services to you? A. I said, the general remark that I don't remember when those wills were made. I might have made a will of that character, but I don't think I did. I am very sure I did not, but if I had that was all cancelled. What nonsense, bringing cancelled paper to take a man's estate and steal his property from him on account of a cancelled paper.

X Int. 73. Had you made any other will before this in Washington since the one that you made immediately after your arrival; between the time of your arrival and this will you made before going away, which you say you did not make? A. I don't know; I can't remember. I told you I couldn't remember the dates of those wills at all, and I couldn't be expected to anyway, but there are none of them good for anything; they have all been superseded—what is the use?

75 X Int. 74. When your wife was ill at Saratoga, how did the complainant happen to go there? A. I don't know.

X Int. 75. Did you send for him? A. No, sir; I suppose he came on the same errand he had been on.

X Int. 76. What errand was that? A. To try to pick my pocket

It was picked there, too, pretty essentially. Money was taken by some one; I don't know who.

X Int. 77. By whom was it taken? A. I don't know. This man was round me all the time—hotel man and others.

X Int. 78. Surely you did not mean that the complainant has ever taken any money from you? A. I can't say. I can suspect anything, a man so smooth and then turn round and try to rob me.

X Int. 79. Will you please state whether or not the complainant has at any time since he has known you ever taken a cent of money from you under any circumstances or for anything whatsoever? A. I don't know, I say. I said I didn't know who took this. I don't know anything about it. I know he was ready enough to do it, because he wouldn't try to pick my pocket in any other way just as well—just as bad.

X Int. 80. Has the complainant ever, in any of his relationship with you, in any way whatever, ever had so much as one cent of money from you? A. I don't remember.

X Int. —. Under any circumstances or for anything whatsoever?

A. I can't say. I don't think he has had much of me if he
76 has had any. I don't know. I can't say.

X Int. 82. How often was the complainant at Saratoga? A. I don't know that either.

X Int. 83. Who paid his expenses? A. I don't know that either.

X. Int. 84. Did you not send for him to go to Saratoga? A. No, sir; I think he came of his own proper accord to get hold of me.

X Int. 85. When your wife died, did you not request that her remains be interred in Rock Creek cemetery, in Washington? A. Yes; I think I did. I am not sure. It was suggested to me anyway.

X Int. 86. Did you not also say to the complainant more than once that when you departed this life that you too would like to be buried in Rock Creek cemetery? A. I don't think I did. I am not apt to be very romantic on such things. I don't remember of saying any such things certainly.

X Int. 87. Is your wife's remains now in Rock Creek cemetery, Washington? A. No; in a lot I own in Chicago.

X Int. 88. Who took them away? A. G. S. Thomas.

X Int. 89. Did you make a will on the 6th day of December, 1892, at Saratoga, prior to the death of your wife, devising again all your property to this complainant? A. No, sir; not that I know of.

X Int. 90. Will you please state where all the embracing was done to which you alluded in your direct examination? A. It was in Saratoga, certainly.

X Int. 91. Who was present when this demonstration of
77 affection was taking place? A. No one was present. I was in a vacant room. This man came in and took me in his arms.

X Int. 92. Was this prior to the death of your wife or afterwards? A. I can't say. I don't remember. No; I guess it was after the death of my wife. I am not sure.

X Int. 93. While your wife was ill at Saratoga, did the complainant ever see you in any other room but at the bedside of your wife? A. I don't think he saw her while she was ill much, of any. He wasn't there but a little time during the sickness.

X Int. 94. What was the object of the embracing? A. Well, he said we must act together, and I suppose to hold us together some way—I don't know what he meant.

X Int. 95. Was Mr. G. S. Thomas there at that time? A. I told you no one — in the room. I think he was. I am not sure.

X Int. 96. What did the complainant mean by "act together"? A. I supposed—I don't know what he meant—but it seems he was trying to get me to make papers conveying my property to him. I supposed that was in connection with that. I took it to mean I was to give him my property, and I guess every one else would.

X Int. 97. If you were so weak and infirm mentally and otherwise at that time, how is it that you could recall the inference of this extraordinary incident? A. Am I to give a dissertation on mental philosophy, Mr. Commissioner?

X Int. 98. What became of the will made at Saratoga? A. I don't know, sir.

78 X Int. 99. Did you make another will while at Saratoga? A. I guess not, sir.

X Int. —. Prior to the death of your wife? Why did you not go home with the complainant when he carried the remains of your wife to Washington for interment? A. I don't know, sir. I think it was because I was afraid to go with him almost.

X Int. 101. If you were so mentally affected, why were you in possession of fear at that time? A. Shall I go into a discussion of mental philosophy, Mr. Commissioner?

Mr. PATCH: Just answer the question, Doctor, briefly.

WITNESS: I can't answer it. What can you say in regard to that, why——

X Int. 102. Where did you go from Saratoga? A. I went to Thomas'.

X Int. 103. Where is that? A. Chicago.

X Int. 104. Who with? A. Thomas.

X Int. 105. Didn't you send for the complainant to come out there to bring you home? A. No, sir; I did not.

X Int. 106. Didn't he go there twice to bring you home? A. I don't know, sir.

X Int. 107. Did you not telegraph him to come and do so? A. No, sir.

X Int. 108. Now, please state, did you know anything whatever of the defendant Miss Whitney at that time—your niece—except being your niece? A. Know anything of her except being

79 my niece? What do you mean by that—how big she was, how old she was, how tall she was? I can't tell what you mean by your question. I knew her, knew of her.

X Int. 109. Had you had any correspondence or communication with her at any time? A. I had correspondence with my sister.

X Int. 110. Did Miss Whitney and your sister know anything of the death of your wife, at Saratoga? A. I supposed so; I don't know.

X Int. 111. Did you send them any word from there? A. I don't know, sir. I sent many words. I think I sent them word. I am not sure, though. I was so very feeble and very sick I was not able to do anything of the kind.

X Int. 112. Did you communicate with her at any time while you were in Chicago, at G. S. Thomas'? A. I don't remember. I was very feeble in health all the time I was at G. S. Thomas' and, of course, could do very little.

X Int. 113. When did you come to Newport? A. About two years hence.

X Int. 114. At whose instigation did you come? A. My sister asked me to come and make her a visit.

X Int. 115. Who brought you here? A. The cars.

X Int. 116. I said *who* brought you. A. This little girl couldn't take me up and bring me.

X Int. 117. Who conducted you hither? A. I came with my niece.

X Int. 118. Did you request the complainant to come and
80 see you upon your arrival here? A. No, sir.

X Int. 119. Did you request him to proceed in a case against one G. S. Thomas, in Chicago, to recover your property? A. No, sir; he talked with me about doing so, but he didn't do a thing.

X Int. –20. Didn't he go to Chicago for the purpose of doing it? A. No, sir; not to my knowledge.

X Int. 121. Why didn't you allow him to proceed after he had begun with the case? A. Because I distrusted his ability. He seemed to me like one of Dickens' characters, trying how not to do it all the time; that is the way it seemed to me.

X Int. 122. Had you deeded away your property there in trust? A. Had I then? No, sir.

X Int. 123. Had you when you desired that he should go to Chicago and begin this case? A. No, sir; I did not.

X Int. 124. Did the said deed include the property in Washington? A. I don't know, sir; I can't remember.

X Int. 125. Did this complainant ever suggest to you that you should convey the property by deed to him? A. Yes, sir; he did.

X Int. 126. Please state when and where such a thing was done. A. When he came to Newport he said so, that I should deed, and argued with me in regard to it, how the thing could be done. He said in connection with that that the laws in the District were pretty strict and the thing would have to be done in a peculiar way, which
he knew how to do. Now, that is all true; there is no fiction
81 about it. That is what he said. I am no lawyer.

X Int. 127. Hasn't the complainant always urged you to go home with him ever since you left it? A. I don't know, sir; I presume so; perhaps so.

X Int. 128. Has he not written to you frequently upon the subject? A. He has written to me sometimes very flattering letters, too—all the same tenor, same oil.

X Int. 129. Who made your answer to the bill filed in this cause? A. Why, I don't know; I can't tell everything.

X Int. 130. Did you dictate it? A. Oh, yes; I guess so. I won't say positively about it, because it seems rather obscure with me now sometimes.

X Int. 131. Have you heard from the complainant since this bill was filed? A. From you, do you mean?

X Int. 132. Yes, sir. A. Since the bill was filed? Yes; one letter; I think but one.

X Int. 133. Have you ever responded to it? A. I have not. My lawyer has it. Oh, I have not been able to. I have not been in health enough to write letters much. My niece has done my business for me.

X Int. 134. Didn't you direct her to write the letter to the complainant to come to Newport to see you when you first arrived here? A. Not that I remember anything about it.

82 *Redirect Interrogatories Propounded by Charles A. Bailey, Esq., Counsel for Defendant.*

Int. 1. In your cross-examination, Doctor, you have stated that your were not aware that the complainant had any money of you for any purpose whatever. A. Well, sir—no, sir. I didn't say that. I said for the house and lot. He did have money of me for the furnace and mantels. I said that I got the receipts for that.

Int. 2. And whether he received anything from you on account of board? A. Yes, sir; he did. I know I paid him some. I remember of paying him. I don't remember everything of that kind, but I remember that distinctly.

R. U. PIPER.
R. U. PIPER.

83 DEFENDANTS' EXHIBIT "A."

WASHINGTON, D. C., *Aug.* 1*st*, 1892.

Received of Dr. R. U. Piper two hundred dollars ($200) on account of money paid by me on steam-heating apparatus in house 1512 Corcoran street N. W., in said city.

E. B. HAY.

DEFENDANTS' EXHIBIT "B."

WASHINGTON, *Aug.* 1*st*, 1891.

Received of Dr. R. U. Piper $50, balance due of $450 paid by me on mantels in house 1512 Corcoran street N. W (city), and $150 on account of money paid by me on steam-heating apparatus in said house.

E. B. HAY.

84 DEFENDANTS' EXHIBIT "C."

This conveyance and lease made this 20th day of October, A. D 1893, by and between Richard U. Piper, party of the first part, and Edwin B. Hay, party of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators and assigns, has leased to the said party of the second part, all those premises situate, lying and being in the city of Washington, District of Columbia, as follows, to wit:

Being lots upon which is situated house No. 1512 Corcoran street; to have and to hold the said above-described premises and appurtenances to and unto the party of the second part, his executors, administrators and assigns, from the first day of January, 1894, for, during and until the first day of January 1897, a period of three years from the said date.

And, the said party of the second part in consideration of the leasing of the premises aforesaid, by the party of the second part, doth covenant and agree with the said party of the first part, his heirs, executors, administrators and assigns, as consideration therefor, to assume control of the said property, to keep the same in repair, the repairs to consist of the ordinary wear and tear, the elements and the acts of God excepted, to reserve as the apartments and for the use of the said party of the first part, continually and exclusively, four rooms and a bath-room; that is to say, two rooms and a bath-room upon the second floor upon the west side of the house, one front room upon the third floor, and one large store-room
85 upon the fourth floor, and to pay taxes upon the said property as same shall become due, and to turn over to the said party of the first part, an amount in the sum of two hundred dollars ($200) per annum, payable quarterly, in four equal quarterly payments, the first payment to be due on the first day of January, 1894, in advance and the said party of the second part further covenants with the party of the first part, that at the expiration of the time in this lease mentioned; that if so desired and requested by the party of the first part, he will yield up said leased premises to the said party of the first part, in as good condition as when the same was entered upon by the said party of the second part, and as hereinbefore mentioned, loss by fire, and ordinary wear and tear excepted.

That this lease shall not be assigned nor the said premises be underlet without the written consent of the said party of the first part or his legal representative.

That all repairs, as hereinbefore stated, deemed necessary for the welfare of the property shall be made by the party of the second part at his own expense.

And the said party of the first part covenants and agrees with the said party of the second part or his legal representatives, that the covenants herein contained being faithfully performed by the said party of the second part, he shall peaceably hold and enjoy the said

demised premises, without hindrance or interruption by the said leasor or any other person.

And the said party of the second part further covenants to watch over and care for the entire premises, and especially to protect and guard the apartments set apart for the party of the first part, with the contents thereof.

86 In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

(Signed) EDWIN B. HAY. [SEAL.]

Witness:

—— ——.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY
vs.
ANNA V. WHITNEY ET AL. } No. 17942. In Equity.

Messrs. J. E. Wilson, A. A. Hoehling, Jr., and E. B. Hay, counsel for complainant in above cause.

GENTLEMEN: Please take notice that the testimony of Richard U. Piper as witness on behalf of defendants, and pursuant to order herein granting commission to take his testimony, will be taken by and before Willis Y. Patch, a notary public in and for the county of Penobscot, State of Maine, acting under said commission herein, on Friday, the nineteenth day of March, 1897, beginning at twelve o'clock *a.* m., at the residence of Mrs. J. F. Whitney, No. 50 Maine street, in Newport, Penobscot county, State of Maine, at which time and place you are entitled to be present or represented by counsel, and that the taking of said testimony will be continued, if necessary, from day to day thereafter, until completed.

B. F. LEIGHTON,
Solicitor for Defendants.

Service of above notice accepted this 5th day of March, 1897.
A. A. HOEHLING, JR.

87 *Interrogatories to be Propounded to James Schouler.*

Filed May 6, 1897.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY, Complainant,
vs.
ANNA V. WHITNEY ET AL., Defendants. } Equity. No. 17942.

Int. 1. State your name, your place of residence, and your profession.

Int. 2. If you shall state that you are an author, state whether you have written any books on legal subjects; and, if so, name such book or books.

Int. 3. State whether you are acquainted with the complainant, Edwin B. Hay, and also with his wife; and, if so, state when you first met them, and whether such acquaintance has been intimate or otherwise.

Int. 4. State whether you are acquainted with the defendant Anna V. Whitney; and, if so, how long you have known her.

Int. 5. Do you know the defendant Richard U. Piper; and, if so, how long have you known him?

Int. 6. State whether you are related to him in any way.

Int. 7. Did you ever see Richard U. Piper in the city of Washington? And, if so, please state when, where, and under what circumstances you saw him.

Int. 8. If you shall answer that you did so see him, state at whose house he was then stopping or residing.

Int. 9. Also state whether Dr. Piper was at that time accompanied by his wife, and also whether the Pipers were living in Washington at that time or simply visiting, so far as you were informed, if you were so informed.

88 Int. 10. State whether or not you were ever entertained at house No. 1535 P street N. W., Washington, D. C.; and, if so, when and by whom entertained, whether by Mr. and Mrs. Hay or by Dr. and Mrs. Piper, or both.

Int. 11. State whether or not, at that time or at any other time, you had any conversation or conversations with Dr. Piper with respect of the complainant, Edwin B. Hay.

Int. 12. If you shall state that you did have any such conversation or conversations, state whether or not the Doctor informed you as to any relations of friendship or otherwise existing between him and Mr. Hay and his wife, or either of them, and state all that was said by Dr. Piper in that connection, if anything.

Int. 13. State whether or not you ever had any conversation with Dr. and Mrs. Piper, or either of them, in relation to the building of a house upon Corcoran street, Washington, D. C.; and, if so, state when and where such conversation took place, and what was said and by whom.

Int. 14. If you shall state that you did have such conversation, state whether you were then, or at any other time, informed by Dr. Piper of any object or purpose he had in building such house; and, if so, state what he said to you upon that subject, if anything.

Int. 15. State whether or not you ever had any conversation with Dr. Piper, in which he made any statement to you in relation to his disposition, in any manner, of the Corcoran Street house; and, if so, please state fully the conversation in which such statement was made, and also whether such statement was made to you upon more than one occasion.

Int. 16. If, in answer to any of the foregoing interrogatories, you shall state that Dr. and Mrs. Piper were dwelling with Mr.

89 and Mrs. Hay, state whether or not Dr. Piper ever informed you of any conditions or arrangement under which the two families were so residing together; and, if so, please state all that was said in that connection.

Int. 17. Please state whether or not Dr. Piper ever informed you as to the existence of any agreement between himself and Mr. Hay in respect of the living together of the two families, the Hays and the Pipers, and also in respect of the Corcoran Street house.

Int. 18. So far as you observed the same, what seemed to be the relations existing between the two families?

Int. 19. So far as you observed the same and from what you may have learned from conversations had with Dr. Piper, state in what regard Mr. and Mrs. Hay were held by him.

Int. 20. Please state with what consideration, if any, regarding care, attention, and affection, the defendant Piper and his wife were treated by the complainant and his wife while they were residing together, so far as you observed the same.

Final interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

90 *Interrogatories to be Propounded to Mrs. James Schouler.*

Int. 1. What is your name? Where do you reside? You are the wife of Mr. James Schouler, are you not?

Int. 2. Do you know the complainant in this cause, Edwin B. Hay; and, if so, how long and how intimately, if at all, have you known him?

Int. 3. Do you know the defendant Anna V. Whitney?

Int. 4. Are you related to her in any way; and, if so, how?

Int. 5. Do you know the defendant Richard U. Piper?

Int. 6. Are you related to him in any way; and, if so, how?

Int. 7. Did you know his wife, Elizabeth F. Piper?

Int. 8. Were you related to her in any way? And, if so, state the relationship.

Int. 9. Do you know anything of the relatives of Doctor Piper? And, if so, please state, if you know, the degree of intimacy existing between Doctor Piper and them, and also the regard in which they were held by him.

Int. 10. Did you, with your husband, visit Washington in 1887?

Int. 11. Did you ever visit Washington subsequent to said date? If so, state when.

Int. 12. Upon the occasion of any of your visits to Washington, if you state you did visit Washington, state whether you saw Richard U. Piper and wife. If so, please state when, where, and under what circumstances you saw them or either of them.

Int. 13. Where were you residing and with whom, if any one?

Int. 14. State how often, if at all, you visited them—Dr. and Mrs. Piper.

Int. 15. State whether or not Dr. Piper ever informed you
91 as to any relations of friendship or otherwise existing between himself and wife and Mr. Hay and wife, or either of them

and state all that was said by Dr. Piper in that connection, if anything.

Int. 16. State whether Mrs. Piper, in the presence of her husband, ever made any statement to you upon the same subject; and, if so, please state all that was said in that connection.

Int. 17. State whether or not Dr. and Mrs. Piper ever expressed themselves in respect of any relations existing between themselves and the Hays; and, if so, whether that expression was of happiness or otherwise.

Int. 18. State whether or not Dr. Piper ever explained to you the circumstances of himself and wife living with the Hays: and, if so, whether or not he ever informed you of any arrangement or conditions under which the two families were so residing together; and, if so, please state all that was said in that connection.

Int. 19. State whether or not you ever had any conversation with Dr. and Mrs. Piper or either of them in relation to the building of house upon Corcoran street, Washington, D. C.; and, if so, state when and where such conversation took place, and what was said, and by whom.

Int. 20. If you shall state that you did have such conversation, state whether you were then or at any other time informed by Dr. Piper of any object or purpose he had in building such house; and, if so, state what he said to you upon that subject, if anything.

Int. 21. State whether or not you ever had any conversation with Dr. Piper in which he made any statement to you in relation to the disposition in any manner of the Corcoran Street house; and, if so, please state fully the conversation in which such statement
92 was made, and also whether such statement was made to you upon more than one occasion.

Int. 22. State whether or not Dr. Piper ever informed you of the existence of any agreement between himself and Mr. Hay in respect to the living together of the two families, the Hays and the Pipers, and also in respect of the Corcoran Street house.

Int. 23. So far as you observed the same, what seemed to be the relations existing between the two families?

Int. 24. Please state with what consideration, if any, regarding care, attention, and affection, Dr. Piper and his wife were treated by Mr. and Mrs. Hay while they were living together, so far as you observed the same.

Int. 25. Please state whether or not, in your presence, Dr. and Mrs. Piper ever used terms of endearment in speaking of Mr. and Mrs. Hay and their children or any or either of them; and, if so, state what terms were so used.

Int. 26. Please state in what manner Mr. Hay addressed Dr. and Mrs. Piper in your presence.

Int. 27. State, if you know, in what manner the children of Mr. and Mrs. Hay were regarded by Dr. Piper and his wife.

Int. 28. Did you at any time visit Dr. and Mrs. Piper and Mr. and Mrs. Hay in house No. 1512 Corcoran street N. W., Washington, D. C., after the same was completed and when they were residing therein?

Int. 29. State whether or not Dr. and Mrs. Piper ever expressed themselves to you as being satisfied, or otherwise, with their arrangements and home life in the family of Mr. Hay.

Int. 30. From your observation and from conversations with Dr. Piper, state whether he regarded himself as a boarder with Mr. Hay or as a member of the family.

Int. 31. From your observation, state in what manner the Pipers were treated by Mr. and Mrs. Hay, and also by the
93 children of Mr. and Mrs. Hay.

Int. 32. State whether or not you ever visited said house, 1512 Corcoran street, during the winter months, and, if so, please state whether or not the same was well heated, and also whether the apartments therein of Dr. Piper, if you were ever in the same, were comfortably heated, or otherwise.

Int. 33. Do you know when Elizabeth F. Piper, the wife of Dr. Piper, died?

Int. 34. In what manner did you learn of her death, and by whom were you notified thereof, if at all?

Int. 35. State whether or not you ever visited or saw Dr. Piper after the death of his wife; and, if so, state when and where.

Int. 36. If you shall state that you did so see Dr. Piper in Chicago, Illinois, please state the conditions surrounding him at that time and under which he was there, so far as you observed the same at the time.

Int. 37. State whether or not Dr. Piper at that time made any statement to you or to any one else in your presence concerning Mr. Hay; and, if so, state what was said.

Int. 38. State whether or not Dr. Piper at that time made any statement to you or to any one else in your presence in relation to the disposition of his property; and, if so, state all that was said in that connection.

Final interrogatory. Do you know or can you set forth and matter or thing which may be a benefit or advantage to the parties at issue in this case or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

94 *Cross-interrogatory to be Propounded to James Schouler, Esq.*

Filed May 7, 1897.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY
vs.
ANNA V. WHITNEY ET AL. } No. 17942. In Equity.

Cross-interrogatories to be propounded to James Schouler, Esq., a witness called in behalf of complainant.

Cross-interrogatory No. 1. If in answer to the seventh interrogatory you state that you saw Richard U. Piper, one of the defendants

in the above-entitled cause, in the city of Washington, state in what years you saw him; if more than once, how frequently in each year, and how long you remained at each visit.

Cross-interrogatory No. 2. If in answer to the ninth interrogatory you state that you were informed that the Pipers were visiting in Washington, state from whom such information was derived.

Cross-interrogatory No. 3. If in answer to the thirteenth interrogatory you state that you had any conversation with the defendant Richard U. Piper in relation to the building of the house on Corcoran street, state in what year such conversation took place, who introduced it, and give as you may be able the exact language employed by Dr. Piper.

If the object of this interrogatory is to establish a contract
95 in respect to the real property in controversy, it is objected to as incompetent for that purpose. Such contract must, to be valid, have been in writing. If sought for any other purpose, it is immaterial.

Cross-int. No. 4. Interrogatory No. 14 is objected to for the reasons assigned in cross-interrogatory No. 3. Interrogatory No. 15 is also objected to for the same reason. If in answer to this interrogatory you state that Dr. Piper made any statement to you with respect to the disposition of the Corcoran Street property, state whether or not such disposition was to be by will or deed, to whom, for what reason, and upon what consideration; and if he conversed with you more than once on that subject, state whether his statements as to his purpose were the same on all occasions.

Cross-int. No. 5. The objection noted in cross-interrogatory 3 is renewed as to the sixteenth interrogatory. If in answer to this interrogatory you state that Dr. Piper informed you of any condition or arrangement under which the two families were to reside together, state whether or not he told you how long the arrangement was to continue, what Mr. Hay was to do or to pay, whether Dr. Piper informed you as to what the arrangement was as to his and his wife's board, whether it was optional with either party to terminate the arrangement at any time they saw fit.

Cross-int. No. 6. The objection assigned in the third cross-interrogatory is also made as to the seventeenth interrogatory. If in
96 answer to this interrogatory you state that Dr. Piper informed you of an agreement between himself and Mr. Hay, state whether or not he informed you that the same was in writing; and, if so, was the same shown to you. If he spoke of such an agreement, did he state its terms and provisions? If so, state fully what they were.

Cross-int. 7. In answering the nineteenth interrogatory give the date at which such conversations as you may speak of took place.

Cross-int. 8. In answering the twentieth interrogatory, if you observed any noticeable instances of care and affection shown toward Dr. Piper and his wife by complainant, give such instances and the circumstances. State whether or not you witnessed any ostentatious or affected demonstration of affection during your visits.

97 *Cross-interrogatories to be Propounded to Mrs. James Schouler.*

Cross-int. 1. If in answer to the ninth interrogatory you shall state that you know the degree of intimacy existing between Dr. Piper and his relatives and how he regarded them, state the sources of your information, whether derived from Dr. Piper's conversations with you or from other persons, and from whom. State whether you know the mother of the defendant Anna V. Whitney, how she is related to Dr. Piper, and what his feelings were in respect to her; whether there was any correspondence between them and how frequent; whether they ever had any disagreement or trouble.

Cross-int. 2. If in answer to interrogatory 14 you shall state that you visited Dr. and Mrs. Piper, give the dates, as nearly as you can recall them, and the length of your several visits.

Cross-int. 3. The 16th interrogatory is objected to as immaterial and irrelevant.

If in answer to the seventeenth interrogatory you state that Dr. Piper expressed himself as happy in the relations existing between himself and the complainant, give the dates of such conversation.

Cross-int. 4. Defendants object to the 18th interrogatory because immaterial and irrelevant; because a contract to affect real estate to be valid must be in writing.

98 If in answer to this interrogatory you state that Dr. Piper did explain to you the arrangement under which he was living with complainant, state whether or not he gave you the details of such arrangement; if so, state what they were; what complainant was to do or to pay; what Dr. Piper was to give or perform, and whether or not such arrangement had already been entered into or was to be entered into in the future; give date when this information was communicated to you.

Cross-int. 5. The defendants hereby repeat the objection made to the 18th interrogatory and assign the same reason for the objection, and, further, that it is immaterial as to what Mrs. Piper may have said. The title to the property in controversy was not in her. No statement made by her could bind her husband, except if made by his authorization, which is not shown, and, further, it is objected that the conversation or statement of anybody except that of Dr. Piper is inadmissible for the reason that it would be hearsay.

Defendants object to the 20th interrogatory because they say it is immaterial what Dr. Piper's purpose was in the construction of the Corcoran Street house. Defendants also object to interrogatory 21 because they say it is immaterial whether Dr. Piper made any statement to witness as to his proposed disposition of the Corcoran Street house. He would only be bound thereto by a contract in writing setting out the terms of said contract and upon sufficient consideration. If answering this interrogatory you say you did have such conversation, state how he proposed to dispose of it, whether by deed or will, and why. Give also the dates upon which such conversation took place.

Cross-int. 6. If answering interrogatory 22 you state that
99 Dr. Piper informed you of an agreement between himself and complainant, as mentioned therein, state whether or not he informed you of the contents of such agreement, whether or not it was in writing, when signed, what were its terms and provisions, what was to be done or performed by Dr. Piper in respect thereto, and what was to be paid or performed by complainant.

Cross-int. 8. Interrogatory 24 is objected to because immaterial. If answering you say you observed any special marks of care and affection shown to Dr. Piper and his wife, state what they were, by whom shown, what was the occasion thereof, and whether affected or natural.

Cross-int. 9. These defendants object to the 25th interrogatory because it is immaterial, and to the 26th because these defendants cannot be bound by any statements made by Mr. Hay, and the same is irrelevant.

If in answering the twenty-eighth interrogatory you state that you visited Dr. and Mrs. Piper at the Corcoran Street house, state when you went, how long you remained, whether you went more than once; if you visited Dr. and Mrs. Piper or Mr. and Mrs. Hay, how long you have known complainant and his wife and how intimate you are with them.

Cross-int. 10. Defendants object to the 29th and 30th interrogatories as leading and immaterial, and to the 32d because leading.

If in answering the 37th interrogatory you state that you saw Dr. Piper in Chicago, state in what condition of health he was at the time, with whom he was residing, and how the conversation was introduced, whether by you or by him or by whom;
100 state how you happened to call upon him while in Chicago, whether at his invitation or suggestion; how a knowledge of his condition came to you; whether or not you are in the habit of corresponding with the defendant Anna V. Whitney or her family, and how frequently. If in that conversation he spoke to you of the disposition of his property, did he say anything to you about having made a will in Washington prior to his departure to Saratoga by which he left all his property to his wife?

Answers to Interrogatories.

Ans. 1. James Schouler; Boston, Mass.; counsellor-at-law and author.

Ans. 2. I have written several books and History of the United States.

Ans. 3. I am acquainted with the complainant, Edwin B. Hay, and his wife. I first met them in the spring of 1888, and have known them since quite intimately.

Ans. 4. I have no personal acquaintance with Anna B. Whitney; have only seen two or three letters written to my wife by her.

Ans. 5. I know the defendant Richard U. Piper, and have known him since about 1873.

Ans. 6. He is a married connection, a second cousin of my wife.

Ans. 7. I have seen Richard U. Piper in the city of Washington. I saw him for about a month each year from 1888 to 1892, when I went to Washington for law-school lectures. I called on him with my wife at the house on Corcoran street.

Ans. 8. I called on the house on Corcoran street which
101 was occupied by the Hay family and the Piper family.

Ans. 9. I saw him accompanied with my wife usually. In the spring of 1888 the house had not been finished on Corcoran street. In the spring of 1888 they lived with the Hays on P street.

Ans. 10. I never was entertained at the house 1535 P street, so far as I can remember; but was entertained at the Corcoran Street house a number of times by invitation of Dr. and Mrs. Piper and Mr. and Mrs. Hay as a family.

Ans. 11. I recall no special conversation material to this controversy at any time. My imperfect hearing prevents general conversations, and I remember no special conversation upon this subject; but from letters of Mrs. Piper to my wife which I read at the time and from what my wife would tell me of her conversations with them I formed what I thought was a clear idea of their relations, and everything that was casually said or done in my presence went to confirm it. The impression thus formed was that the Corcoran Street house was built as a common home where Dr. and Mrs. Piper would live for the rest of their lives with the Hays' family, and that they regarded Edwin B. Hay as an adopted son, substantially intending that he should have the property at their death. Their relations always seemed affectionate like parents and children, and Dr. and Mrs. Piper always spoke to me of Mr. Hay and his wife in the most loving terms.

Ans. 12. I have already answered this in my ans. to interrogatory 11.

Ans. 13. I recall no particular conversation with either Dr. or Mrs. Piper in relation to the building of the house on Corcoran street, but all that they said at different times on the subject gave me the idea of the joint arrangement I have above stated.

102 Ans. 14. I understood the house was built especially to carry out the arrangement of living together.

Ans. 15, 16, and 17. I have already answered these interrogatories.

Ans. 18. There seemed to be perfect confidence and affection between the parties, and they seemed to be members of one household.

Ans. 19. Both Dr. Piper and Mrs. Piper appeared to be very fond of Mr. and Mrs. Hay.

Ans. 20. So far as I observed, Dr. Piper and his wife were treated by Mr. and Mrs. Hay with the utmost care, attention, and affection.

Ans. to Cross-interrogatories.

Ans. 1. I saw Richard U. Piper in the city of Washington for about a month or six weeks in each year, 1888 to 1892, inclusive. When I went to Washington for my law lectures my wife and I

boarded elsewhere, but I went personally to see them about six times on an average, but not more than once in 1888. I generally went with my wife, and R. U. Piper would sometimes return my calls; but Mrs. Piper and my wife were back and forth, calling or doing errands, and my wife visited Corcoran street much more than I did.

Ans. 2. In 1888 my information that the Pipers were living in Washington at the Hays' house before the Corcoran Street house was built came from the Pipers themselves. They were living as one family.

Ans. 3. I have had no specific conversation with Dr. Piper on that subject.

Ans. 4. I understood that the house was built expressly for the Pipers and Hays to live together during the lives of
103 the old people, and then to go to Mr. Hay and his family in consideration of giving Dr. and Mrs. Piper a home. All his statements on this subject were the same on all occasions.

Ans. 5. He always gave me to understand that the arrangement was to continue for life. I knew nothing of what was to be paid or the terms of board, but understood it was not optional for either party to terminate the arrangement without the consent of the other.

Ans. 6. I never was informed whether there was any agreement in writing or not. I never was shown any such agreement and never was told of any specific terms of agreement.

Ans. 7. My ans. to the 19 interrogatory is founded on no special conversations, but on the general tenor of our intercourse.

Ans. 8. I never saw any noticeable instances of care and affection while at the house of Dr. and Mrs. Piper. Both appeared well and there was no need of it. I never witnessed any ostentatious or affected demonstration of affection, and if there had been any I think I would have noticed it. Mr. Hay and his wife appeared simple and sincere, and the whole mutual intercourse was familiar and unstrained.

JAMES SCHOULER.

May 8, 1897.

Subscribed and sworn to before me—

WILLIAM C. VANDERLIP,

[SEAL.] *Notary Public.*

104 Ans. 1. Emily F. Schouler; residence, Boston; wife of James Schouler.

Ans. 2. I know the complainant, Edwin B. Hay, since the spring of 1888 very well, quite intimately.

Ans. 3. I know the defendant Anna V. Whitney very slightly; have only seen her twice.

Ans. 4. I think she is probably my third cousin.

Ans. 5. I know the defendant Richard U. Piper very intimately.

Ans. 6. I am his second cousin.

Ans. 7. I know his wife, Elizabeth F. Piper, very intimately, indeed.

Ans. 8. Elizabeth F. Piper is a second cousin, also.

Ans. 9. I do know that he has one sister living.

Ans. 10. I do not remember whether I visited Washington in 1887 or not.

Ans. 11. I visited Washington every year from 1888 to 1892.

Ans. 12. I saw Richard U. Piper at their home and at our hotel very frequently.

Ans. 13. In 1888 and 1889 we were at Mrs. Rines on H street; after that at the Hotel Shoreham.

Ans. 14. I visited them very often. We met almost every day when I was in Washington.

Ans. 15. Dr. Piper did tell me something about these matters, and I understood that the house on Corcoran street was built for the joint use of Mr. and Mrs. Hay and Dr. and Mrs. Piper; that they were to occupy it jointly, as one family, during the lives of the Pipers.

Ans. 16. Dr. and Mrs. Piper talked matters over very freely with me. My first information as to their arrangements came from Mrs. Piper herself at Dr. Piper's request.

105 Ans. 17. Dr. and Mrs. Piper expressed themselves as being very happy in the mutual relations existing between themselves and Mr. and Mrs. Hay. They were treated in the household as if they were their own parents—with the utmost kindness, consideration, and affection.

Ans. 18. I can't give a very definite answer as to this; but Mrs. Piper, my cousin, told me all the circumstances of their living with the Hays. Mrs. Piper informed—that the arrangement was that they were to live with the Hays for the remainder of their natural lives, and that upon their death the house was to go to the Hays, and that they had made their wills to that effect. This matter was talked over many times, and Cousin Lizzie said to me that, all things considered, it was the best arrangement for them that could possibly be made.

Ans. 19. In the spring of 1888 I was told all about the house and the mutual arrangements, and I was taken to see the house in its unfinished condition. I was told that it was being built for the joint use of Dr. and Mrs. Piper and Mr. and Mrs. Hay, as their permanent residence.

Ans. 20. I have already answered this interrogatory. I was informed that the house was being built for the joint use of Dr. and Mrs. Piper and Mr. and Mrs. Hay.

Ans. 21. I cannot give any definite conversation, but I do know that in planning the house Mrs. Hay's comfort and convenience were considered and the rooms were arranged to suit her ideas. I do not remember that Dr. Piper made any statement to me as to the disposition of the house, but Mrs. Piper did. She stated to me that by mutual agreement the house would go to Mr. and Mrs. Hays at their death. This statement was made to me a number of times by Mrs. Piper.

106 Ans. 22. I have no doubt that Dr. Piper informed me of the existence of this arrangement, but do not remember

just when. Our relations were very confidential and intimate, and the matter was frequently spoken of. It seemed to be perfectly understood that the families were living together as one family, and relations were those of children and grandchildren and parents.

Ans. 23. The relations seemed to be confidential and affectionate.

Ans. 24. Dr. Piper and his wife were treated with the utmost care, tenderness, and affection by Mr. and Mrs. Hay and their children.

Ans. 25. The usual terms of endearment and affection were used, as in all families.

Ans. 26. Mr. Hay addressed them always as father and mother Piper.

Ans. 27. The children regarded them as grandfather and grandmother, and spoke of them as such.

Ans. 28. I did visit Dr. and Mrs. Piper and Mrs. and Mr. Hay in the house 1512 Corcoran street many times after the house was completed and while they were residing there.

Ans. 29. Dr. and Mrs. Piper did state that they were satisfied with their arrangements and home life in the family of Mr. Hay, and Mrs. Piper stated that it was the best arrangement for them that could possibly be made.

Ans. 30. Dr. Piper regarded himself as a member of the joint family.

Ans. 31. The Pipers were treated with great kindness by Mr. and Mrs. Hay and the children.

Ans. 32. I have visited the house 1512 Corcoran street in the winter season. The apartments of Dr. and Mrs. Piper seemed
107 to me to be well heated, and a stove was put in in addition to the steam-heating apparatus, as Dr. Piper required considerable heat.

Ans. 33. Mrs. Piper died the third of January, 1893.

Ans. 34. I was notified of her death by Mr. Hay.

Ans. 35. I visited Dr. Piper in July, in 1893, after the death of his wife.

Ans. 36. I saw Dr. Piper in Chicago; his surroundings seemed to be comfortable as far as I saw them.

Ans. 37. Dr. Piper did say that Mr. Hay had done wrong, or something of that sort, but nothing more about it, and I said to him I could not believe it, and he changed the subject. He was in a very feeble state at this time and very much broken down.

Ans. 38. Nothing was said to me about the disposition of the property at that time.

Cross-interrogatories.

Ans. 1. As far as I know, there was no intimacy existing between Dr. Piper and his sisters; there is one sister living with whom he was friendly, but not intimate. I saw Anna V. Whitney twice only.

Ans. 2. I visited them very frequently—the dates I do not remember—in fact, I visited them all my life in their different places of residence.

Ans. 3. Dr. Piper always expressed himself as happy in his relations with Mr. and Mrs. Hay. I never heard anything else. I can give no dates.

Ans. 4. I know nothing of any dollar and cents arrangement in this matter, but I do know that Dr. and Mrs. Piper were to live with Mr. and Mrs. Hay during their natural lives, and
108 & 109 be taken care of as their parents, and at their death the house on Corcoran street was to go to Mr. and Mrs. Hay.

Ans. 5. ——.

Ans. 6. Dr. Piper did not inform me whether there was any agreement in writing or not.

Ans. 8. I noticed that very great care was shown in regard to Dr. Piper's food, he being somewhat of a dyspeptic, and great care was taken to provide things that he could eat.

Ans. 9. I visited Dr. and Mrs. Piper at the Corcoran Street house frequently and often saw Mr. and Mrs. Hay.

Ans. 10. He was very feeble mentally and physically; he was residing with Dr. Thomas. I was in Chicago at the Exposition and called on Dr. Piper because he was a relative and I was fond of him. A few business letters have passed between Anna V. Whitney and myself relating to private business about ourselves. He did not state anything to me about having made a will in Washington prior to his departure to Saratoga.

EMILY F. SCHOULER.

May 10, 1879.

Subscribed and sworn to before me.

WILLARD C. VANDERLIP,
[SEAL.] *Notary Public.*

* * * * * * *

110 JUNE 1, 1897—Tuesday, 10 o'clock a. m.

Met, pursuant to agreement, at the law office of B. F. Leighton, Esq., Bradley building, corner of 4½ and D street N. W., Washington, D. C.

Appearances: B. F. Leighton, Esq., solicitor for the defendants; the complainant, the examiner, and—

ANNA V. WHITNEY, who, being produced as a witness of lawful age for and on behalf of the defendants and being first duly sworn, deposes and says:

Direct examination.

By Mr. LEIGHTON:

Q. You are one of the defendants in this case? A. Yes, sir.

Q. Do you know the parties to this cause? A. Yes, sir.

Q. How is Richard U. Piper related to you, if in any way? A. He is my mother's brother—my uncle.

Q. What was the relation existing between your mother and your uncle, Dr. Piper, the defendant, during your recollections? A. Aunt Lizzie always corresponded with my mother, and Doctor

Piper always put something in the letters. They always seemed to be very fond of each other. My mother often talked of them and they corresponded regularly.

Q. Who do you mean by Aunt Lizzie? A. Dr. Piper's wife.

Q. Is she now deceased? A. Yes, sir.

111 Q. Up to the time of her death how frequent was the correspondence between your mother and the Dr.'s wife, your aunt Lizzie? A. I cannot say exactly; probably every week or two, and then two or three weeks apart. They had a constant correspondence.

Q. Do you know of any estrangement or any strained relations on the part of Dr. Piper towards your mother? A. No, sir; they always seemed friendly to each other—not that I know of. If there had of been any strained relations I would have known of it.

Q. Do you know whether there was any strained relations between Dr. Piper and any member of his family? A. I think at one time there was some little feeling between him and one of his brothers.

Q. What was the cause of that? A. It was something about some property of grandfather's. They were always on speaking terms, and occasionally wrote to each other. I know that the Dr. wrote to him after he moved into the Corcoran Street house.

Q. Where do you reside? A. Newport, Maine.

Q. Have you always lived there? A. No, sir; only about twelve years.

Q. Have you ever visited your uncle while he resided in Washington? A. I visited him the first time after he came to Washington. It was either in the fall of 1888 or 1889.

Q. Where was he residing at that time? A. It was very soon after he moved into the Corcoran Street house. He said he had rented it to this lawyer, Mr. Hay, and that he had reserved

112 apartments for himself, and the remainder of the house he rented to Mr. Hay.

Q. Did you visit your uncle again while he lived in Washington? A. Yes, sir; several times, while he lived at the Corcoran Street house.

Q. When did you learn of your aunt's death? A. We first learned of it through Mrs. Schouler. She corresponded with mother and she mentioned in her letter something about Aunt Lizzie having gone. That was the first we knew of it.

Q. When did you first learn of the illness of Dr. Piper at Saratoga? A. Aunt Lizzie wrote mother very frequently about it. She always wrote more about him than herself. She wrote to mother about it after she was sick herself, and after she was sick in bed she got the nurse, a Mrs. Johnson, to write. Aunt Lizzie wrote mother, and she said in her last letter that she wished mother lived nearer, so that she could come to her home and see her. She got the nurse to write mother after she was in bed, and after we got the letter from the nurse my mother wrote and said I would come on and take care of her; mother wrote two letters and I wrote one, but we never received any letter in reply, and uncle said he never received them.

I think the nurse failed to give the letters to uncle, as she received twenty-five dollars per week and she was afraid she would be discharged.

Q. How did you learn of your uncle being taken to Chicago or of his going to Chicago? A. It was while I was in Boston. It was either by letter, or I am under the impression that Mrs.
113 Schouler told me about it. First it came through Mrs. Schouler. She had gone to Chicago. She said that he was not happy there; that he had unpleasant surroundings, and then I went to Exeter, where his brother lived. Some one wrote his brother in Exeter an anonomous letter, signed from a friend, saying that Dr. Piper was in Saratoga ill and without friends, without money, and was suffering, and asked him if he could not send some money to help him. My mother got very much worried about him and wanted me to go on there and see about him.

Q. Did you ever call whilst Dr. Piper was in Chicago upon the complainant, Mr. Hay? A. Yes, sir; I called, I think, three times. I believe it was three times.

Q. Did you get any information from him as to how your uncle was situated, at either of your visits here? A. The first time he said to me that he expected my uncle home every day—any day—he may come home tonight or tomorrow. The second time he said likewise.

Q. How long after your first visit was it that you made your second visit? A. I used to come here every five or six weeks—it was about that time. I had a good deal of business to attend to, and after I learned of the disagreeable surroundings of Dr. Piper, the third time I saw Mr. Hay I told him what Mrs. Schouler had said to me, or part of it, and then he confirmed it and he gave me an account of his disagreeable surroundings in Chicago and what he had done.

Q. This revelation was made to you on the third visit? A. Yes, sir.

Q. Was anything said during the first and second visit-?
114 A. No. He, Mr. Hay, said he was there on a visit to Chicago, and I told him what Mrs. Schouler had said. He said it was true; that he had gone to Chicago to bring him home. I said, Mr. Hay, I will go on and invite him to come home with me, and I will bring him home. I went to Chicago, and mama had given me a letter of invitation to him to come and spend the summer with her, and I asked him to go home with me, and he was very much delighted, and he said, If I go to Maine with you I want to stay always. I want to remain at your house until I die. I said, After you stay during the summer you may want to go to Washington. He insisted that he would want to stay always. I found out that we could go home over the Grand Trunk route, or we could go over the Baltimore and Ohio road, and if he wanted to stop over in Washington he could stop here a few days and then go on. He said he would like to go the most direct way to Newport, and on the 17th of June we left Chicago for Newport over the Grand Trunk line.

Q. Where he has been residing with you ever since? A. Yes, sir; since 1895.

Q. It is charged in the bill of complaint that the deed conveying the property in Washington to you was procured by you through undue influence upon your uncle. State fully how he came to make that deed, and what he said, if anything, in connection with its execution. A. That is entirely wrong. On the contrary, when uncle first spoke of making the deed—it was directly after it was released from the deed of trust given to Moore—he spoke of giving me a deed of the property here. I said, Don't be in a hurry. Wait until the Chicago matter is entirely settled, and then you can convey the property to me, or make a will, or fix it
115 as you like, if you wish. He spoke to me three or four times about it before I would allow him to do it. He did make a deed to me, and I gave him a life lease in case anything should happen to him. I opposed it three or four times before I allowed him to do it. He was so anxious to do it. He said something might happen to him; that I had all this time looked out for him, and he proposed making a deed of this property to me.

Q. How did the life lease happen to be given—at whose suggestion? A. I suggested it to him. I said to a friend of ours, ex-Governor Davis, I am afraid people will think I am after his property. He said, If you feel that way you can just give him a life lease, and that was the way it was suggested to him.

Q. Who is Mr. Davis? A. He is an attorney-at-law, or was. He has done some business for me, and in talking over my affairs with him I mentioned this to him.

Q. You spoke of a deed of trust conveying certain property in Chicago to a man by the name of Moore. When did you first learn of that deed of trust? A. When I went after uncle. He had a copy of it which he showed to me, and I read it over to him. Afterwards that copy was given to Mr. Hay in our parlor at home, when Mr. Hay was down there in August. Mr. Hay brought it to Washington, and attorney in Chicago wrote to him for it.

Q. Did you ever see this copy after it was given to Mr. Hay? A. No, sir. I remember that my uncle gave it to Mr. Hay in our parlor, and Mr. Hay exclaimed, "What! the house in Washington?" and he spoke of this man Thomas as a villian.

116 Q. This ejaculation on the part of Mr. Hay was after he had read the deed? A. Yes, sir.

Q. Do you recollect when it was that Mr. Hay made this visit to Newport? A. It was in August, I know. It was the middle of August.

Q. Do you know how he happened to come there? A. Mr. Hay wrote to uncle that he was arranging for a vacation in August, and, if it was agreeable to him, he would visit my uncle in Newport. He said he was coming East and would visit my uncle in Newport. Then I wrote back and invited him to stay with us and make his home with us.

Q. In pursuance with that invitation, he came? A. Yes, sir.

Q. Do you know whether or not Mr. Hay there, on that visit at

your house, asked Dr. Piper to give him the property in Washington? A. I know that while he was there my uncle told me that Mr. Hay wanted him (my uncle) to give him (Mr. Hay) a deed conveying his property in Washington to Mr. Hay. My uncle said that Mr. Hay told him he knew how it could be arranged. My uncle told me that while Mr. Hay was there, but he said he would not do it.

Q. Did you go to Chicago in connection with the setting aside of this deed of trust that you have mentioned? A. The first time I went to Chicago was, I think, in September after uncle came to us, in June. It was after Mr. Hay had made his visit to Newport. Mr. Hay gave me a letter of introduction to some lawyer in Chicago.

117 I was going there to try and settle the business with Thomas. Uncle wanted me to settle the matter up without a suit, and Mr. Hay gave me a letter of introduction to a lawyer in Chicago.

Q. What was his name? A. Case, Hogan and O'Donnell. The letter of introduction was to Mr. Hogan, but Mr. Hogan was away, and I saw Mr. O'Donnell and talked with him several times. He investigated the record and found that the deed was recorded. I saw him once or twice, but I did not like the appearance of the place, and I made an investigation and found out that the firm did not bear a very good character. I thought, if we did have to have any law proceedings, I would not like to have anything to do with them.

Q. I show you a letter, bearing date June 24, 1895, addressed to Dr. Piper, purporting to be from Mr. Hay and ask you if it was received by the Dr. A. Yes, sir. That was the first letter that uncle received from Mr. Hay after he came to live with us at Newport.

Mr. HAY: I admit that that letter was written by me.

Q. This letter contains this paragraph: "That very sweet girl, your niece, said she would go to Chicago and ask you to leave with her." In your conversation with Mr. Hay prior to going to Chicago, did you advise him that you would bring Dr. Piper with you to Washington or Newport? A. I simply said I was going to Chicago and ask uncle to come home with me—either ask or invite him to come home with me. I did not say in Washington, because my home was in Newport.

Q. Your home was at that time in Newport? A. Yes, sir. I had a letter at that time from mama for uncle inviting him to spend the summer with us.

118 Mr. LEIGHTON: I offer this letter from Mr. Hay in evidence. (NOTE.—The same is herewith filed in evidence and marked "Exhibit J. H. No. 1.")

Q. What about the deed of trust in Chicago that was given to Moore? Was there any litigation in respect to that? A. Yes, sir,

Q. What was the result of the trial? Was it in favor of your uncle or against him? A. It was in favor of uncle.

Cross-examination.

By Mr. HAY:

Q. What is your age? A. I am over eighteen; I was born October 9th, 1865.

Q. When was the first time you ever saw your uncle? A. I think I saw him when I was a baby; when I was quite little. The first time I saw him after he came to Washington was either in 1888 or 1889; I think it was in 1889. It was very soon after he moved here.

Q. Then the first time you saw your uncle to know him was in 1888 or 1889, here in Washington? A. Yes, sir.

Q. Did the Dr. know you? A. No; he did not know me at first; he thought I looked like mama.

Q. Upon your return home, didn't you tell your mother that he was living with a family by the name of Hay, and that he was going to leave his property to them? A. Yes, sir; I said he was living in Washington and he had built a house recently, and that he had rented it to a Mr. Hay, a lawyer, and had reserved a
119 portion of it for himself, and I thought possibly he might remember them in his will.

Q. Did the Dr. talk to you at that time about the relationship that existed between himself and the complainant? A. The Dr. said at the time, just as I have already stated, that he had rented the house to Mr Hay, a lawyer; that he had reserved a portion of it for himself. He did not say anything about the relationship that existed between him and the complainant otherwise than as landlord and tenant.

Q. Did you ever hear afterwards, either through Mr. Hay or Dr. Piper, of the relationship that existed between the Dr. and the complainant? A. No, sir; except what I have referred to.

Q. Did they not speak of the complainant in this case as their son Edwin in your presence? A. No, sir; never. I think he only called you that a few times. He said that was not his custom. I only learned that after this suit was instituted; it was not his custom at all.

Q. Then, as a matter of fact, during all the time that Dr. and Mrs. Piper lived with the complainant in the city of Washington, you did not see them but twice, the occasions you have mentioned before? A. I think I saw him three or four times; I think on three different visits. I think it was three times I saw them while they lived in Washington.

Q. How intimate was the relationship of Dr. Piper with his brothers? A. I cannot tell that.

Q. Did your mother or you know of the death of Mrs. Piper until nearly a year after her death? A. O, yes; I think it was
120 about—it was a number of weeks—I do not know just how many—before we heard it through Mrs. Schooler.

Q. Now, as a matter of fact, don't you know that your mother wrote a letter in August, 1893, to Mrs. Piper asking why she did not write to her? A. No; I think not. She may have written a

letter to Aunt Lizzie prior to hearing of her death asking her why she did not write to her. I know she was surprised at the time. I have the impression that it was only a matter of five or six weeks before learning of auntie's death, but I am under the impression it was not very many weeks. It may have been two months.

Q. When did you first learn from the complainant of the whereabouts of the Dr., as he was not in Washington after the death of Mrs. Piper? A. I first learned of the whereabouts through Mrs. Schooler. The first time the complainant spoke to me about him was, I think, in the spring of 1893, and he said he expected him home in a day; I am not positive about the time. Mr. Hay said he expected him home any time; that he had gone to Chicago on a visit.

Q. When was the next conversation you had with the complainant concerning Dr. Piper? A. I do not know. It was some time after my visit to Washington; I do not know just how long.

Q. See if you cannot remember the last conversation you had with the complainant prior to your going to Chicago for Dr. Piper. A. It was in June, 1895.

121 Q. Did you not say when you left the complainant that you were going to Chicago to bring Dr. Piper home? A. I said I was going to Chicago to see and get him to come home with me.

Q. Did you not lead the complainant, Mr. Hay, to believe at that time that you intended to go to Chicago and bring Dr. Piper home to Washington? A. No, sir; I said exactly what I have stated.

Q. Did you have any idea in your mind at that time of carrying him to Newport? A. I intended to have him go to Newport and spend the summer.

Q. If you were in Washington, why did you use the word "bring"? A. I do not think I did use the word "bring." I think I said "invite." I might have said bring him home.

Q. Has not the Dr. always spoken to you of the complainant in the most affectionate terms? A. No; not always.

Q. Did he not do so during the first part of his visit to your home? A. No; during the first part he said—when he was writing about the case—when he was talking about the Thomas matter—he said, you possibly knew considerable about the circumstances, as it took a rogue to catch a rogue; that perhaps it was best to have you do something about it, and when you came on your visit we would talk about it. We did talk it over with you, and finally we engaged Mr. Davis for the Chicago matter.

Q. Was there ever a more affectionate greeting between father and son than between Dr. Piper and myself? A. You remember

122 when you first came the Dr. was in the room and he walked away, and I said, Uncle, this is Mr. Hay, and he came back and he seemed to be pleased with your visit afterwards. I think he rather enjoyed your visit, except he said he was suspicious of you.

Q. Did the Dr. specify any particular instance in which I did not always treat him with the utmost consideration? A. He said sev-

eral times, You don't know Mr. Hay; you don't understand him as I do. I said, Why? and he said, No matter. At one time he spoke of the Sharron case. He said that you were trying to keep it until after he was gone, so as to have the money yourself.

Q. Concerning the deed made by the Dr. to you, was there any consideration given by you to the Dr. for this deed? A. No; the Dr. gave it without any consideration, except I gave him this life lease back. I never gave him any more than that.

Mr. HAY: I do not want to have this cross-examination closed here. After I look over her testimony I may want to further cross-examine her.

ANNA V. WHITNEY.

Subscribed and sworn to before me this 1st day of June, 1897.
JOSEPH HARPER, *Examiner.*

SARAH A. WAYNE, being produced as a witness of lawful age for and on behalf of the defendant and being first duly sworn, deposes and say-:

123 Direct examination.

By Mr. LEIGHTON:

Q. You are a resident of the District of Columbia? A. Yes, sir; I am from Alabama.

Q. Were you acquainted with Richard U. Piper and his wife? A. Yes, sir.

Q. When did your acquaintance with them commence? A. I do not know; some six or seven years ago. I have known them quite a long while. I have no distinct recollection of the year in which I first got acquainted with them.

Q. How many years did you know them before they moved away? A. Five or six years.

Q. How intimate was your acquaintance with them? A. I saw Mrs. Piper quite frequently; I visited her and she visited me.

Q. Were you acquainted with the Dr. as well as you were with Mrs. Piper? Did he usually accompany his wife on her visits to your house? A. Yes, sir; I knew him very well indeed.

Q. Do you know anything about how they felt in respect to their residence with Mr. Hay? A. Well, they spoke kindly of Mr. Hay. I do not remember of but two occasions when Mrs. Piper spoke to me about them. I asked Mrs. Piper if Mr. Hay treated them kindly, and she called him by his first name and said he always seemed to be the same, but Mrs. Hay made it unpleasant for both of them. Mrs. Piper was very unhappy, and I felt very sorry for her.

124 Q. How long were these conversations prior to her going to Saratoga? A. The first conversation I do not remember; it was probably two or three years before they left. The last was two evenings before they left. She seemed to be very unhappy that evening, and said she hoped that while they were away they could make different arrangements when they returned.

Q. Did she indicate to you in any way the cource of her discomforture? A. I cannot remember anything she said, only that she was very unhappy and not pleasantly situated, especially at the table. She disliked to go to the table very much.

Q. Was there any complaint on account of the children of Mr. Hay? A. Mr. Piper said the children annoyed them a great deal. He seemed to be very fond of them at first. He said that they had so many children playing on the front porch, and that noise annoyed him.

Q. Do you recollect how long prior to the departure of Dr. and Mrs. Piper that this first conversation took place—how many years or months? A. Probably two years, I suppose. I cannot tell the exact time. The last conversation was just before they left, the evening before the last evening.

Q. Did Dr. Piper have a conversation with you on this subject? A. He spoke in this way. We never had any private conversation about it. These conversations with Mrs. Piper were private. I never repeated it to any one. I never talk about anybody. If Mrs. Piper had not of been so unhappy she would not have told it to me. I felt very sorry for her that evening.

125 Q. Dr. Piper did not participate in this last conversation? A. No, sir.

Q. Did he ever have any conversation with you, making any complaint? A. Yes, sir; he complained of being annoyed.

Q. How frequent? A. Only on this one occasion.

Q. Where was this first conversation? A. At his house. Both of these conversations took place in his own room.

Q. When did you learn of the death of Mrs. Piper? A. I did not know it until two or three weeks afterwards.

Q. Did you know of the funeral? A. No, sir; I would like to have attended it. Mrs. Piper always corresponded with me when she left the city, and always spoke of Dr. Piper and his health. She always spoke very little of herself.

Cross-examination.

By Mr. HAY:

Q. Where do you live? A. No. 1510 Q street northwest.

Q. When did you first meet Dr. and Mrs. Piper? A. I cannot tell you that; I have no recollection of the date. I have known them for some time.

Q. Did you know them prior to their going into the house 1512 Corcoran street? A. I do not think I did.

Q. How long had they been living at 1512 Corcoran street when you met them? A. I do not know. I remember when he

126 was building their house. I think I met them when they were living on P street.

Q. Did you hear him speak of the complainant in this case and of his relations with him? A. Yes, sir; I have heard him say the things that I have repeated. I cannot repeat the exact conversa-

tion because I have no distinct recollection of it—I cannot remember the exact words.

Q. How often did you visit them while at 1512 Corcoran street? A. Frequently. Dr. Piper was especially pleasant and he invited me around to see him. He was a very intellectual man, and I always gained some information from him. It was a pleasure to be with him.

Q. Did you ever meet the complainant or Mrs. Hay on these visits? A. No, sir.

Q. This was the first time you ever met the complainant? A. Yes, sir.

Q. Can you tell how many visits you paid them within one month or any given time? A. No, sir; Mrs. Piper and I used to go to church frequently together. The girls used to go over quite often.

Q. You have stated that they always spoke kindly and affectionately of the complainant? A. I never heard them speak of him but on two occasions. Mrs. Piper said that Mr. Hay treated them kindly, and that he was always the same.

Q. Did she or either of them state any particular acts of annoyance committed by Mrs. Hay? A. No; they only said that Mrs. Hay was not what she ought to be.

127 Q. Did she state in what particular their relations were unpleasant? A. I do not know. When they spoke to me about it they said the children annoyed them very much; that they had been very fond of children, especially the boy, but that they annoyed them very much.

Q. Did they specify how the children annoyed them? A. No, sir.

Q. How long prior to their going to Saratoga did you see them? A. I saw them quite a number of times. The last time was on the second evening before they left. I spent the evening with them. There was no conversation about them at that time. It was the evening that Mrs. Piper seemed to be very much distressed, and she called me into an adjoining room and told me that her surroundings were very unhappy and that they would try to make different arrangements when they returned.

Q. Did she say how Mrs. Hay treated her? A. She said that she did not treat her kindly.

Q. How about the treatment of Dr. Piper? A. She said that Mrs. Hay did not treat either of them kindly. I believe that Dr. Piper had previous to that time said that he was not very well satisfied with their surroundings.

Q. But at no time complained of the complainant or of his treatment of her? A. No, sir.

Q. Did you not, Mrs. Wayne, see the announcement in the
128 Star of the death and funeral of Mrs. Piper? A. No, sir.

SARAH A. WAYNE.

Subscribed and sworn to before me this 1st day of June, 1897.

JOSEPH HARPER, *Examiner.*

FRIDAY, *June 11th*, 1897—10.30 o'clock a. m.

Met, pursuant to agreement, at the law office of B. F. Leighton, Esq., Bradley building, corner of 4½ and D street- northwest, Washington, District of Columbia.

Appearances: B. F. Leighton, Esq., solicitor for the defendants, the complainant, the examiner, and—

REDFORD W. WALKER, who, being produced as a witness of lawful age for and on behalf of the defendants and being first duly sworn, deposes and says:

Direct examination.

By Mr. LEIGHTON:

Q. What is your name? A. Redford W. Walker.
Q. What is your business? A. Real estate.
Q. How long have you been engaged in the real-estate business? A. About twenty-five years.

129 Q. I have asked you to examine house No. 1512 Corcoran street and give what, in your judgment, would have been a fair rental value of said houses between the years 1888 and 1892. Have you done it? A. Yes, sir.

Q. Will you state what, in your judgment, was a fair rental value of said house between those years? A. Between eighty-five and ninety dollars per month.
Q. What would be a fair rental value of it since 1892? A. Now, its rental value would be about seventy or seventy-five dollars per month.
Q. Did you go inside of the house? A. No, sir; I saw it only from the outside. I heard how many rooms were in it.
Q. You assumed that the house had fourteen rooms, had two bath-rooms, all the modern improvements, and heated by steam? A. Yes, sir.
Q. That was the basis of your estimates? A. Yes, sir.

Mr. HAY: The testimony of the witness is objected to, as the value of the property is not a question to be considered in a matter of this kind.

REDFORD W. WALKER.

Subscribed and sworn to before me this 11th day of June, 1897.
JOSEPH HARPER, *Examiner.*

130 AARON S. CAYWOOD, being produced as a witness of lawful age for and on behalf of the defendant and being first duly sworn, deposes and says:

Direct examination.

By Mr. LEIGHTON:

Q. What is your name? A. Aaron S. Caywood.
Q. What is your business? A. Real estate.

Q. Where is your place of business? A. No. 933 9th street northwest.

Q. How long have you been engaged in the real-estate business? A. In the city of Washington since 1873.

Q. Have you been in the same business since 1873? A. Same business.

Q. You have had to do with the rental of houses? A. Yes, sir.

Q. I requested you to make an examination of house No. 1512 Corcoran street northwest, Washington, D. C., with the view of giving your opinion as to the rental value of said house between the years 1888 and 1892 and since that time. Have you made such examination? A. Yes, sir.

Q. Assuming that there are fourteen rooms in the house, two bath-rooms, all modern improvements, and heated by steam, what, in your judgment, would have been a fair rental value of said property between 1888 and 1892? A. About one hundred dollars
131 per month if the house was in good condition.

Q. What would be a fair rental value since that time? A. I think at the present time you could get from seventy to seventy-five dollars per month for it.

Q. Why the difference? A. Rents are lower now than at that time.

Q. On account of the present condition of the real-estate market? A. Yes, sir; and the general condition of things.

Mr. HAY: The testimony of the witness is objected to, as the value of the property is not a question to be considered in a matter of this kind.

AARON S. CAYWOOD.

Subscribed and sworn to before me this 11th day of June, 1897.

JOSEPH HARPER, *Examiner.*

MARK D. BRAINARD, being produced as a witness of lawful age for and on behalf of the defendants and being first duly sworn, deposes and says:

Direct examination.

By Mr. LEIGHTON:

Q. Will you please state your name, occupation, and place of residence? A. I am a lawyer by occupation; reside at 1534 16th street northwest, in this city.

Q. The parties to this litigation are Mr. Edwin B. Hay,
132 Miss Anna V. Whitney, Dr. Richard U. Piper, and a man by the name of George Moore. Do you know them? A. I know Mr. Hay, Miss Whitney, Dr. Piper, but I do not know Mr. Moore.

Q. From what time does your acquaintance with Dr. Piper date? A. Some years back; very shortly after he came to Washington to reside with Mr. Hay.

Q. Did you know him when he lived with Mr. Hay in the P Street house? A. Very well.

Q. Also after they moved to the Corcoran Street house? A. Yes, sir.

Q. How intimate were your relations with Dr. Piper and his wife during that period? A. He and I were quite intimate. He and his wife would frequently call at our house, and we went frequently in the evening to visit them.

Q. You were in the habit of visiting back and forth to each other's houses? A. Yes, sir.

Q. Did you ever have any business to do for the Dr. of a professional character? A. Well, I would not say that the services *of* were of a professional character, because I did not make any charge for it. It was more in a friendly way and at his request.

Q. You did some legal service for him? A. I did.

Q. What do you know about his making a will prior to his departure for Saratoga? A. I know he made a will about the
133 4th of July, 1892. I drew it up for him, at his request, from a draft which he had made in his own handwriting.

Q. What became of that will? A. I do not know what became of the original will.

Q. Was it executed in due form of law? A. Yes, sir.

Q. Have you the minutes from which this will was prepared? A. I have.

Q. Will you be kind enough to produce them? A. I have them in my hand. I desire to state with reference to this paper—had several consultations with me at my house with regards to the form of wills, etc., and he finally brought over this paper and asked me if it was correct. I told him that it was not, and he then asked me to make the corrections and to have a correct copy made of it in accordance with the bequests he had made. I made the lead-pencil interlineations myself, and the part that is in ink was written by Dr. Piper.

Mr. LEIGHTON: I offer this paper in evidence.

Mr. HAY: The introduction of this document is objected to upon the ground that the communications made at that time between Dr. Piper and this witness as his lawyer were confidential communications and not admissible.

NOTE.—The same is herewith filed in evidence and marked Defendants' Exhibit J. H. No. 2.

Q. The will as prepared by Dr. Piper and as corrected by you is as this paper indicates? A. Yes, sir.

Q. Did Dr. Piper at any time before his going away express to you his feelings towards the complainant in this case and
134 his family? A. Dr. Piper expressed to me many times his feelings in regard to the complainant in this case, Mr. Hay, whom he always called Edwin. Both Dr. Piper and Mrs. Piper were very fond of Mr. Hay, and they always spoke of him in the kindest way possible.

Q. Did he at any time speak to you in respect to Mrs. Hay and the treatment accorded to them by her? A. Yes, sir.

Q. Please state what was said in that connection. A. It is impossible for me to give the exact language; it has been a long while ago. I can only give the substance of the conversations or the impressions made upon me at the time. Dr. Piper was not particularly friendly towards Mrs. Hay; he was incensed towards her on account of her religious belief. I reasoned with Dr. Piper and tried to persuade him out of it, but I could not. Then there had been some little matters in the house, which, perhaps, might be trivial in themselves, but Dr. Piper had magnified them into matters of considerable importance. I think Mrs. Hay had said things to Dr. Piper at several times that he had taken umbrage at.

Q. How long were these conversations prior to the departure of Dr. Piper for Saratoga? A. I think it was very shortly after the day he had written that will. I think, perhaps, the day it was written or the day after—about the 24th or 25th of June, 1892. He came over to see me several times—four or five nights in succession—and we talked over this matter, and I endeavored to dissuade him from the course he was taking in this matter. I did not know that he had any real cause of grievance. I thought Mr. Hay was very kind to him. We discussed the matter there in various
135 ways, and all these little details would come in, and sometimes he would discuss morals and talk about religion, both ancient and modern. Dr. Piper was a very intelligent man.

Q. Was their not a change in his kindly expressions of feelings toward the Hay family during the latter part of your acquaintance with him? A. Never in so far as Mr. Hay was concerned; towards Mrs. Hay he entertained a very strong feeling.

Q. And it arose from two causes? A. Yes, sir; so far as I could ascertain.

Q. Do you recollect at the time of preparing this will of which you speak there being any other will at that time? A. Dr. Piper had a will. Whether it was original or not, I am unable to say. It had the appearances of being original. In this will the son of Mr. Hay was named as beneficiary. When this will was executed Dr. Piper destroyed that other will.

Q. How? A. He burned it.

Q. Do you recollect the provisions for this son in the original will? A. No, sir. I know it was quite favorable for the son. I only read it that one time.

Q. Were any other members of the Hay family remembered in the will except the son Edwin? A. I do not recollect. I suppose a copy of that document is in existence.

Q. Do you know whether Mrs. Piper shared the feelings of her husband with respect to Mr. Hay? A. Very much more than Mr. Piper. I know I heard her say that she had concealed from
136 the Dr. the fact that Mrs. Hay had joined the Catholic Church, knowing his prejudices.

Q. Did she speak of any other irritating things other than the change in relation to Mrs. Hay's religion? A. Yes, sir. Mrs.

Piper was dissatisfied with Mrs. Hay. It was one of those things I felt a reluctance to mix up in. I wanted to act as peacemaker. I thought the Pipers were nice people. They were all friends of mine, and I wanted to smooth matters over.

Cross-examination.

By Mr. HAY:

Q. How soon after Dr. and Mrs. Piper had come to live with the complainant in this case at 1535 P street did you see them? A. I suppose several months.

Q. How did you come to meet them? A. I think that my wife first became acquainted with Mrs. Piper at church, and subsequently we called and they returned the call.

Q. Did Dr. Piper or Mrs. Piper converse with you as to their relations with the complainant? A. Frequently. They always spoke of Mr. Hay as Edwin. There never was anything in their conversation that would indicate anything but the highest regard for him.

Q. Did you ever hear them call him "Son Edwin"? A. I do not recollect the expression of Son Edwin.

Q. Did they tell you why they came to Washington to live with the complainant? A. My recollection is rather indistinct as to that. I learned that they intended to make their home with your family and for living with you they intended to make your son their heir.

137 Q. Are you quite sure it was the complainant's son or Son Edwin? A. I do not recollect the expression Son Edwin. My impression was that your son was to be made an heir at that time.

Q. Did Dr. or Mrs. Piper ever speak to you of their relatives? A. I heard Mrs. Piper speak of her relative Cousin Boardman.

Q. Did you ever hear Dr. Piper or Mrs. Piper speak of Miss Anna V. Whitney? A. No, sir.

Q. How often did you have interviews with Dr. Piper as to his relationship with the complainant? A. It was never brought out by me. It was only when Mr. or Mrs. Piper would speak of it. Now and then some remarks would be made to me about it.

Q. Did Dr. Piper ever speak to you about the building of the house 1512 Corcoran street? A. No, sir.

Q. Do you know when the house was built? A. Yes, sir.

Q. You say he never said anything to you about it? A. No, sir.

Q. As to why he was building it or who for? A. No, sir.

Q. The conversations you have related concerning the conduct of Mrs. Hay occurred during the last few months of the time before they went away? A. I cannot fix the exact day when I first heard of it. I know it caused a good deal of surprise to me, and I endeavored to smooth it over. I thought it was a little jar
138 or a misunderstanding.

Q. In your interviews prior to the time of making this will did you hear of any complaint about Mrs. Hay? A. I think I heard Mrs. Piper say a good deal about it and intimate that she

kept it from the Dr., but the Dr. never expressed any emphatic opinion to me until he came to make this will, and then he was very emphatic and it seemed to me unnecessarily so. For three or four days I discussed this matter with Dr. Piper and tried to dissuade him from making that will, telling him why he should not be so prejudiced, etc.

Q. This prejudice of which you speak seemed to be because of this matter of the church? A. That was one of the causes, and there was something that Mrs. Hay had done. What it was I do not know. It was something that excited him.

Q. Did it occur on the day that he came over to see you? A. No, sir.

Q. Did he speak of one instance or a number of instances? A. Well, there were a number of small things he spoke of.

Q. The prejudices was founded upon the matter of the change in her church—her religious denomination? A. Very strongly so. Dr. Piper seemed to be unnecessarily severe on her. I reasoned with him about it and tried to smooth the matter over with him.

Q. He never complained in any way of the complainant? A. No, sir.

Q. From your conversations with Dr. and Mrs. Piper and your knowledge of the complainant, did you receive any impressions whatever as to the relationship existing between Dr. and Mrs. Piper and the complainant in this case?

139 Mr. LEIGHTON: Question objected to as not being proper cross-examination to ask for the opinion of the witness in a matter of which he can know nothing except that derived from the language of the parties.

A. The impressions I could gather from the conversations I had with Dr. Piper were that he entertained the very highest regard for the complainant.

Q. Was there anything said to you by Dr. Piper as to the relationship existing between him and the complainant? A. I could not at this time begin to give any more than the substance of the conversations or the impressions made upon my mind by the conversations with Dr. Piper, and those were as I have stated. He was very friendly, indeed, towards the complainant in this case and he always spoke of him as Edwin.

Q. Did he not state, further, how he was living with the complainant? A. I do not think he ever told me the details of the matter. I think on one occasion he stated that he had made arrangements with Mr. Hay or had made a contract with him whereby he was to have a suite of rooms in the house reserved for his benefit, and that Mr. Hay was to pay him, if my recollection serves me right, two hundred dollars per year and board for himself and wife. I have never seen the original agreement, if there was such an agreement, and only state now from recollection what I heard the agreement was from Dr. Piper.

Q. Did he state this to you while he was occupying the complain-

ant's house, No. 1535 P street? A. No, sir; it was some time
140 after you moved into the new house.

Q. Did he state anything as to the disposition of this property? A. I think the only thing I knew was what I gathered from the will that Dr. Piper had at the time this one was prepared that I have offered in evidence.

Q. What was that? A. Well, I think I have already stated in my testimony that there was a bequest in that will, according to the best of my recollection, in favor of Mr. Hay's son. I cannot state definitely what it was; I read it over. The will was destroyed and the matter passed out of my mind.

Redirect examination.

By Mr. LEIGHTON:

Q. The bequest in that will was a money bequest and not a property? A. I would not state that.

MARK D. BRAINARD.

Subscribed and sworn to before me this 11th day of June, 1897.
JOSEPH HARPER, *Examiner.*

141 HORACE L. PIPER, being produced as a witness of lawful age for and on behalf of the defendants and being first duly sworn, deposes and says:

Direct examination.

By Mr. LEIGHTON:

Q. Do you reside in the city of Washington? A. I live at No. 1505 L street northwest.

Q. How long have you lived there? A. Over thirty years.

Q. The parties to this suit are Edwin B. Hay, Anna V. Whitney, Richard U. Piper, and George Moore. Do you know them? A. I do not know Moore; I know all the others.

Q. How long have you known Mr. Hay? A. I have known him for more than twenty-five years.

Q. Intimately? A. I was always well acquainted with him.

Q. How is Dr. Piper related to you? A. I am not good on relationship. He is a remote cousin of my father's.

Q. When did your acquaintance with him commence? A. The first I ever heard of him was one day my wife picked up a newspaper and saw the notice of a permit to build a house issued in the name of Dr. Piper.

Q. Did Dr. Piper at any time have any conversations with you in respect to Mr. Hay or his wife in relation to his residence with them? A. Yes, sir; he said that he was surprised that Mr. Hay did not mention the fact that he was living with them. He said he had built the house, and that he and his wife were living with
142 Mr. Hay; that it was a business transaction, and that was about all that was said at that time. He invited me to come

and see him. I, of course, went up there very reluctantly because of the fact that Mr. Hay, as I thought, did not want the Dr. and his family and myself to come together, and on that account I thought I might not be very welcome.

Q. What gave you that impression? A. This thing had gone on for two or three years, and Mr. Hay and I had met frequently, and he never mentioned the fact that he had living with them a family by the name of Piper. I know if I had of had a family living with me by the name of Hay I certainly would have mentioned it to Mr. Hay.

Q. Was there anything in the conduct of Mr. or Mrs. Hay that gave you that impression? A. I had met Mr. and Mrs. Hay at the Shakespeare Club and at other places, and no mention was ever made to me that they had a family living with them by the name of Piper, and we thought it very strange. We called on Dr. and Mrs. Piper one evening, and Mrs. Piper said, I want to bring Florence (Mrs. Hay) in, and she went and called her, but Mrs. Hay did not come. That occurred a couple of times, and so I thought they did not like our going there, and my wife got the same impression, and that was why I refrained from going. I felt that I had better stay away, and so I did. That was the status of things until about 1892. They came to our house twice to our going to their house once. Dr. Piper is a very intelligent man and a good talker, and Mrs. Piper was a lovely woman. They would talk over their relations with the Hay family—I do not mix up with other people's affairs.

The general tenor of their remarks seemed to indicate that
143 things were not pleasant.

Q. From what statement made by Dr. Piper or Mrs. Piper did you gather that? A. Well, I do not like to state things out here. The Dr. begun to speak rather slightingly of some of our friend's performances.

Q. Who do you mean by that? A. Mr. Hay. I made no special response to that, but laughed. Then there was considerable conversation of an unpleasant kind as to the other side of the house.

Q. As to who, Mrs. Hay? A. Yes, sir.

Q. What was that? A. Well, one of the things was in relation to food. The Dr. could not get steak that he could eat. The madam was not disposed to be obliging, but Mr. Hay tried to make things better.

Q. Was anything said by Dr. Piper as to the treatment they received from Mrs. Hay other than what you have mentioned? A. I cannot recollect any special conversation. They both seemed to be out of sorts with her.

Q. Anything that Dr. Piper said in connection with his relations with them you may state. A. Nothing except what I have stated. He spoke rather lightly and sneeringly of Mr. Hay's public life; nothing very definite. On the last visit they told us that they were going away and the Dr. proposed to sell me his house. We were talking about building about that time and something was said
about our house. I said, What I want is a double house; I
144 want a house like yours. He said, Buy mine. I said, You don't want to sell; and he said, Yes; I will sell. I said, It

was beyond my pile. That was the last time we saw them before we went to Saratoga. The first thing I knew, in picking up a paper, we found that Mrs. Piper was dead and was to be buried here. Our relations were such then with the Pipers that it seemed to me that Dr. Piper should have given me notice of his wife's death; but he did not. I was not certain whether I would go to the funeral or not. I wrote a note to him, but did not get any answer, and I did not feel any better about it. My wife said, You ought to go up there. I did not want to go; but, against my will, I went, thinking possibly that Dr. Piper was sick. I thought it strange that Mr. Hay did not notify me. I found out that Dr. Piper was not here.

Cross-examination.

By Mr. HAY:

Q. When did you first meet Dr. and Mrs. Piper? A. That was the time I have stated; it was in 1889.

Q. Where was the Dr. and Mrs. Piper living when you first met them? A. At your house.

Q. Did the Dr. in any of his interviews with you speak of the relationship existing between the complainant and himself? A. He said it was simply a business transaction. They expressed surprise that you never mentioned it to us.

Q. You did not know them when they were living at 1535 P street? A. No, sir.

Q. Did they have any conversation with you about the
145 complainant and his treatment of them? A. Only what I have mentioned. We did not encourage it. We generally felt kindly to you, Mr. Hay, and my wife has spoken a whole book full of compliments about you.

Q. Did they mention any instance of the treatment by Mrs. Hay to them? A. About the food was the special instance. They mentioned other instances or, rather, unkind treatments. I do not recollect about them now. They gave me the impression that they were very much displeased with their treatment. I do not think they attributed it so much to you as to the madam.

Q. Then the feeling towards the complainant had not changed? A. Yes, sir; it had changed.

Q. He never spoke about any change in his affection for the complainant? A. He never intimated to me that he had any affection for anybody in that house except his wife. He said that his living with you was simply a business transaction. He never expressed any affection towards you or any member of your family,

Q. How often did you have interviews with them? A. I felt that I was not welcome in that house, although I had as much right there as any visitor. I stayed away from him many times because I thought your people did not want us. I suppose I have not been there over a half a dozen times in my life.

Q. Was not this a matter of your own imagination? A. No, sir; I do not think I am an imaginative person. I sometimes wished I

was. As often as I met you you might have said, Why,
146 & 147 Mr. Piper, I have a family living with me by the name of Piper. I do not know how a person could possibly forget to mention such a circumstance. Dr. Piper said they had never heard of a man or woman living in Washington by that name until this matter came up.

Q. Do you know who gave you the Doctor's address? A. I think it was through his brother.

Q. Who suggested to you to call at our house? A. I do not know; I rather think it was his brother. That I do not know.

Mr. LEIGHTON: My testimony is closed.

Mr. HAY: My cross-examination is closed.

HORACE L. PIPER.

Subscribed and sworn to before me this 11th day of June, 1897.
JOSEPH HARPER, *Examiner.*

* * * * * * *

148 EXHIBIT "J. H. No. 1."

F. B. H.

1425 N. Y. AVE., *June* 24, 1895.

MY DEAR SIR: I am in receipt of yours of 22nd inst., and I am so pleased and somewhat surprised, I confess, at Newport, Maine. I could not believe my eyes; I had to look twice and spell out Newport. That very sweet girl, your niece, said she would to go Chicago and ask you to leave with her. I am glad you were able to do so, and I trust that Newport will continue your improvement. I shall be in your confidence as always. Our relations are sacred, and I'll avail myself of communicating with you either personally or by letter. If personally I'll have to wait a little while to close some business matters, but I'll write you often and freely. On the 1st *I'll send a letter as usual, with you know what.* Remember, all our communications shall be as you desire—confidential, as indeed they always have been. My sincere regards to the niece; tell her when she is on her monthly trip to Washington to please call and see me. Awaiting your further communication, I am loyally and affectionately,

SON EDWIN.

149 DEFENDANTS' EXHIBIT J. H. No. 2.

In the name of God amen, I Richard U. Piper now of the city of Washington, District of Columbia, being of sound mind and memory do hereby make publish and declare this my last will and testament—revoking any former will by me made.

1st I desire a Christian burial.

2d I desire and direct that all of my debts if any should be due at the time of my death shall be first paid with my funeral expenses; and all just debts due me collected

3d I give and devise to my wife Elizabeth F. Piper all my real estate viz., lots one hundred and thirty-nine (139) one hundred and forty (140) one hundred and forty-one (141) in George E. Emmons, subdivision of lots in square one hundred and ninety-three (193) in said city of Washington, with all the improvements thereon and appurtenances thereof—and also my house No. 376 with the lot of ground on which said house is situated on West Adams street in the city of Chicago, State of Illinois, to have and to hold the real property above described to the said Elizabeth F. Piper, her heirs and assigns forever.

4th I give and bequeath to my wife Elizabeth F. Piper all the money and personal and mixed property of whatever nature of which I shall die seized and possessed, consisting of bank deposits, in the Central national bank of this city, and also property in Washington Safe Deposit Co. No. 416, 418, Pennsylvania avenue, consisting of $5,000 in cash, and valuable papers, and also all books, pictures, clothes and all other things belonging to me in my house No. 1512 Corcoran St. in this city, and elsewhere

150 & 151 5th. I direct and it is my will that my wife Elizabeth F. Piper shall as soon as practicable after my death pay out of my personal property the sum of one thousand dollars ($1,000) to my sister Victoria A. Whitney now of Newport Maine, all the balance being at her (my said wife's) sole and absolute disposal.

6. I desire that my wife Elizabeth F. Piper shall at her death if she so choose give to Edwin B. Hay the sum of ten thousand dollars.

In testimony whereof, I have hereunto set my hand and seal this 23rd day of June 1892.

[RICHARD U. PIPER.]* [SEAL.]

I nominate, constitute and appoint my wife Elizabeth F. Piper as the sole executrix of this my last will [and testament, and as she is the sole legatee thereunder,]* and I request that she be not required to give bond for the performance of her duties as such executrix.

* * * * * * *

152 In the Supreme Court of the District of Columbia.

EDWIN B. HAY
vs.
ANNA V. WHITNEY ET AL. } In Equity. No. 17942.

It is hereby stipulated and agreed between counsel for complainant and counsel for defendants that in the interrogatories and cross-interrogatories in the commission issued to A. W. Shepherd, Esq., in the testimony of Mr. G. S. Hine and Mrs. G. S. Hine, of Saratoga, that wherever "Mrs. G. S. Hine" occurs it shall be understood to "Franc F. Hine," the sister of Mr. G. S. Hine, and not his wife, and

* [Words enclosed in brackets erased in copy.]

that the first cross-interrogatory, asking if she is the wife of G. S. Hine and how long she has been married to him, may be omitted.

Given under our hands this 6th day of July, A. D. 1897.

E. B. HAY,
Counsel for Complainant.
B. F. LEIGHTON,
Counsel for Defense.

153 *Interrogatories to be Propounded to Mr. G. S. Hine, Saratoga, N. Y.*

1. State your name, business, and place of residence.
2. How long have you resided at that place in Saratoga?
3. State if you know the complainant, Edwin B. Hay.
4. How long have you known him and under what circumstances did you first meet him?
5. State if you know Dr. Richard U. Piper.
6. Where and when did you first become acquainted with him?
7. Did he at that time make you aware of the relationship existing between himself and the complainant, Edwin B. Hay?
8. When and where did you next see Richard U. Piper?
9. Did he during this second visit to your house in Saratoga ever speak of the relations existing between himself and the complainant in this cause?
10. Please state what appellation Doctor Piper applied to the complainant when referring to him.
11. State if during the time that he was there he made a will in your presence.
12. How many witnesses were present when he executed the same?
13. State if during the illness of the wife of Doctor Piper he sent for the complainant in this cause to come to him in Saratoga.
14. State if you were present and saw him subscribe his name to a second will, made on the 6th day of December, 1892.
15. Who were the other witnesses?
16. Did he sign in your presence and did you and the other witnesses sign in the presence of each other?

154 17. What became of that will?

18. What was the mental condition of Richard U. Piper when he destroyed the will?
19. What became of the destroyed will?
20. Please look at the exhibit filed with these interrogatories and state if you recognize them as pieces of the will witnessed by you.
21. State what was the condition of Dr. Piper when he was removed from your home and carried to Chicago.
22. By whom was he taken away?
23. Who removed the remains of Mrs. Piper from Saratoga?
24. State, if you know, the reason why Doctor Piper refused to go with the complainant in this cause to Washington.
25. State if the complainant, with yourself and your wife and

others, endeavored to prevail upon him to accompany his wife's remains to *its* burial place.

26. Were you present at the funeral services held in the parlors of the Broadway house the evening before the remains were shipped?

27. State who conducted the same.

28. State any other facts within your knowledge pertaining to the cause that may be of benefit to any of the parties in this cause.

155 *Interrogatories to be Propounded to Mrs. G. S. Hine.*

1. State your name and place of residence.

2. Are you related to G. S. Hine, who has testified in this cause?

3. Do you know the complainant in this cause, Edwin B. Hay?

4. How long have you known him, and how did you become acquainted with him?

5. Do you know the defendant, Richard U. Piper?

6. When and where did you first become acquainted with him?

7. How often has the defendant and his wife visited your house at Saratoga?

8. When he was there upon the second visit, in 1892, did you, with your husband, witness a will signed by Doctor Piper?

9. Did Doctor Piper state to you at any time, either upon the first or second visit, the relationship existing between himself and the complainant, Edwin B. Hay?

10. State if, during the illness of defendant's wife, he did not send for the complainant to come to them.

11. Did Dr. Piper ever make any other will in your presence while he was there on this second visit?

12. Do you know how many visits Mr. Hay made to your home during the illness of Mrs. Piper and Doctor Piper?

13. How did the Doctor always allude to Mr. Hay in conversation with you about him?

156 14. What was the condition of the health of Doctor Piper after Mrs. Piper died?

15. How did he come to leave your home?

16. What was his condition when he went away?

157 *Cross-interrogatories to be Propounded to Mr. G. S. Hine, a Witness Called on Behalf of Complainant.*

Cross-int. 1. The defendants object to the seventh interrogatory because it is leading, irrelevant, and immaterial.

If in answer to the tenth interrogatory you say that Dr. Piper called complainant "Son Edwin" or designated him by a similar phrase, state how frequently you heard him so speak of complainant, and whether you heard him call him anything else while with you, and whether at any time during his stay with you he expressed any suspicions of complainant; if yea, what they were.

Cross-int. 2. If in answer to the eleventh interrogatory you say yea, state whether or not you saw the will written; if yea, by whom; who were present in the room at the time; their names and ad-

dresses; what became of the will, if you know of your own personal knowledge; whether you read the will; if so, how you came to read it; whether at the request of Dr. Piper or otherwise. State its provisions if you recollect them. What was its date? State whether Dr. Piper was in your house at the time; if so, in what character or quality; whether as boarder or guest. What was Dr. Piper's mental and physical condition at the time he made the will?

Cross-int. 3. If in answer to the thirteenth interrogatory you say yea, state, if you have personal knowledge of the fact, whether he did not send for complainant at the request of his wife.

158 Cross-int. 4. If answering the fourteenth interrogatory your answer be yea, state how you happened to be present; whether at the request of Dr. Piper; whether you saw the will written and who wrote it; whether Dr. Piper was ill at the time and confined to his bed, and whether at this time or any subsequent time, staying at your house, he expressed any suspicions of complainant; and, if so, what and in respect to what.

Cross-int. 5. Defendants object to the eighteenth interrogatory, as it does not appear that witness is an expert in mental diseases; nor has he been interrogated as to any facts upon which such opinion as he might give *to* be based, and, further, it is leading.

If you say that Dr. Piper destroyed this will, state whether or not you saw him do it or whether you were informed that he did it. If you say that he destroyed the will, state whether at the time he was capable of making a valid deed or will. If you state that you think he was not so capable, state the things done or said by Dr. Piper upon which you base such an opinion. State how long he remained in the condition of which you speak, at what time his mental trouble commenced, how long it continued, whether it was brought about by disease or mental anguish at the death of his wife.

Cross-int. 6. If your answer be yea to the twentieth interrogatory, state how you recognized said pieces as parts of the will witnessed by you; whether because of the contents of the will or otherwise.

159 Cross-int. 7. If in answer to the twenty-first interrogatory you state that Dr. Piper was ill and unfit to be removed, state why you permitted him to go. State who were the nurses and attendants on Dr. Piper during his illness; who hired them, and whether or not on your recommendation or suggestion; who accompanied Dr. Piper from your house; whether you advised Hay that he was being taken away; if not, why not.

Cross int. 8. If in answer to the twenty-fifth interrogatory you say yea, state the reasons given by Dr. Piper for not coming to Washington with the remains of his wife; in what physical condition he was at that time; whether he was in fit condition to travel; why you urged him to come, whether at the suggestion of complainant or some one else.

Cross-interrogatories to be Propounded to Mrs. G. S. Hine.

Cross-int. 1. If in answer to the second interrogatory you state you are the wife of said G. S. Hine, state when you were married; what was your maiden name; whether or not you were one of the nurses that attended Dr. Piper while in Saratoga.

Cross-int. 2. If your answer be yea to the eight- interrogatory, state how you came to witness it; at whose request or suggestion; whether you saw the will written; if yea, by whom; who was present when it was written; whether you read the will or heard it read; if not, how you knew it was a will; if you did, what were its contents.

160 Cross-int. 3. If your answer be yea to the tenth interrogatory, state how you knew Dr. Piper sent for complainant; whether he requested you to send for him or whether he sent himself; whether he sent at the request of his (Dr. Piper's) wife or not.

Cross-int. 4. If in answer to the eleventh interrogatory your answer be yea, state how you happened to be present, at whose request; how you know the paper was a will; who wrote it. Was it written in your presence; who else was present; was Dr. Piper at the time of making his will confined to his room or bed; what was the date of the will; was it subsequent to his wife's death?

161 Testimony of George S. Hine, of Saratoga Springs, N. Y., taken before A. W. Shepherd, at said place, pursuant to the annexed commission, on the 12th day of July, 1897, the witness being first duly sworn according to law.

To the first interrogatory he saith: My name is George S. Hine; am a hotel-keeper, and reside at Saratoga Springs, N. Y., corner of Broadway and Grove street.

To the second he saith: I have for twenty years.

To the third he saith: I know the complainant, Edwin B. Hay.

To the fourth: Have known him for about five years. I first met him at my house. I telegraphed at the request of Richard U. Piper on account of the illness of Mrs. Piper.

To the fifth he saith: Yes.

To the sixth he saith: First in October, 1891, at my house, Saratoga Springs.

To the seventh: He did some time during his visit. He spoke of his being with him, living with him, and called him his adopted son.

To the eighth: In 1892, about the last of August.

To the ninth: Yes; he did; spoke of him as "Son Edwin" and as his adopted son.

To the tenth: Son Edwin.

To the eleventh: He did not make any in my presence; he executed one in my presence; by make I mean write.

To the twelfth: Mr. Hay, the nurse, Mrs. Johnson, my sister, and myself and Mrs. Piper.

To the thirteenth: He did.

To the fourteenth: Yes; he did.

To the fifteenth: My sister and Mrs. Johnson.

To the sixteenth: He did; and the witnesses all signed in presence of each other and of the testator at his request.

162 To the 17th: It was torn up; I do not know by whom.

To the 18th: He was not in his right mind in one sense. He was delerious, drank a good deal of whiskey, and took morphine.

To the 19th: It was taken from a slop-jar, where it had been thrown, given to me, and I gave it to Mr. Hay, the complainant, when he came here, about January, 1893.

(Exhibit attached to commission here shown witness.)

To the 20th: I do.

To the 21st: He was weak, body and mind both. He did not know Dr. Thomas, who stood beside him.

To the 22nd: Dr. Thomas, of Chicago.

To the 23d: Edwin B. Hay.

To the 24th: I do not know; only he said he was unable to travel; was too sick.

To the 25th: Complainant did try; no one else; he did not try to force him, only reason with him.

To the 26th: I was.

To the 27th: Rev. Dr. Joseph Carey, rector of Bethesda Episcopal church, Saratoga Springs, N. Y.

To the 28th: I know of nothing more.

G. S. HINE.

163 To the 1st interrogatory he saith: When he spoke to him it was either as "Son Edwin" or Mr. Hay; never expressed any suspicions of him; always spoke highly of him.

To the 2nd: He made but one will in my presence—that is, executed but one.

To the 3d: It was not at his wife's request. He sent for me to his room, said his wife was sick, and asked me to telegraph for Mr. Hay to come.

To the 4th: I went at Dr. Piper's request. I did not see will written. Dr. Piper was not ill at that time. He never expressed suspicion of complainant at all.

To the 5th: I do not know who destroyed the will. At the time it was destroyed I do not think he was capable of making either a valid deed or will. My reasons are because he was taking too much whiskey and morphine to know what he was doing. He talked wild, kept a loaded revolver by his bed's head, was afraid that he was going to be robbed; a man had to be with him all of the time. This condition continued about 4 or 5 weeks; commenced about a week before his wife died. He wanted an undertaker in before she was dead, and when she knew what was going on. His condition was brought on by whiskey and morphine and not by grief.

To the 6th: By my signature and that of my sister.

To the 7th: Because I had no control over him. The nurse was

William Tyler, of Saratoga Springs, N. Y., hired at my suggestion. I told Dr. Piper he would have to have a man, and he asked me to get him one, and I got Tyler. Dr. Thomas, of Chicago, accompanied him from my house. I did advise Mr. Hay that he was being taken away—that is, after Dr. Thomas took him, I wrote Mr. Hay that fact.

To the 8th: He said he was not able to travel; was too sick.
164 He was able to travel, in my judgment, had he wanted to. I did not urge him to go.

G. S. HINE.

* * * * * * *

Deposition of Francis E. Hine, a witness on behalf of the complainant, taken pursuant to the annexed commission and the stipulation attached, at Saratoga Springs, N. Y., on the 12th day of July, 1897, before A. W. Shepherd, commissioner, the witness being first duly sworn according to law.

To the first interrogatory she saith: My name is Francis E. Hine; I live at Saratoga Springs, N. Y., corner of Broadway and Grove streets, and have for 20 years.

To the 2d: I am his sister.

To the third: I do.

To the 4th: I have known him for 5 years & first became acquainted with him at Broadway house at that time.

To the 5th: I do.

To the 6th: In 1891, at Broadway house, Saratoga Springs.

To the 7th: Twice.

165 To the 8th: I did.

To the 9th: He did.

To the 10th: He did.

To the 11th: He did.

To the 12th: I think three times; can't say definitely.

To the 13th: Either as his adopted son or Mr. Hay.

To the 14th: In feeble health—mental and physical; not in his right mind; he was crazy.

To the 15th: He was taken away by Dr. Thomas, of Chicago, in February, 1893—cold weather.

To the 16th: Very feeble.

FRANCIS E. HINE.

The first cross-interrogatory being waived by the stipulation attached to commission, to the 2d cross-interrogatory she saith: Mr. Hay came down and *and* wanted to know if we would witness a will; said Dr. Piper wanted us to witness his will; did not see will written, nor read it nor hear it. Dr. Piper, in answer to a question, said it was his will and asked us to sign as witnesses—that is, my brother, Mrs. Johnson, and myself.

To the 3rd: Dr. Piper requested that my brother should telegraph for him, not at request of his wife that I know of.

To the 4th: He made another will in my presence about January, 1893. I was called in to witness it; it was stated to be a will; Dr. Piper said it was. Mr. Willard J. Miller, of Saratoga, wrote it. It was not written in my presence. There were present Mr.
166 John Cox, Jr., of New York, a woman nurse, and Mr. Miner. Dr. Piper was confined to his bed. I do not know the date of that will. It was executed after his wife died.

FRANCES E. HINE.

* * * * * * *

167 I, Richard U. Piper being of sound and disposing mind and realizing the uncertainty of life make this my last will and testament. First, I desire my debts to be paid. Second, I give, bequeath and devise all of my estate real, personal and mixed of every nature, and kind and wherever situate and unto my beloved wife Elizabeth F. Piper, that is to say, the real estate consisting of No. 1512 Corcoran street in the city of Washington District of Columbia, and the lots upon which it stands fully described by metes and bounds in deed recorded in land records of the District of Columbia, and No. 376 West Adams street in the city of Chicago, State of Illinois and the lots upon which it stands and all real estate of which I die possessed to her for and during her natural life, and at her death to my adopted son Edwin B. Hay at the city of Washington, District of Columbia, in fee-simple to him and his heirs and assigns forever.

Item—I desire that she should shall control it, the said real estate, to rent it and to live in it, during her life, and receive from it for her support and use the rents and proceeds and profit. I give and bequeath to my said wife all my personal estate to do with as she pleases, and dispose of it as she will—by will or otherwise but should I survive my wife I direct the said personal estate to be given and I do give and bequeath it to my said son by adoption for love affection and services, the said Edwin B. Hay, and direct him to pay out of it if sufficient if not the out of the real estate the following bequest, that is to say the sum of $3,000, to my sister Victoria A. Whitney of Newport Maine, and also to give the following items of personal property to those name that is
168 to say, "the large picture of "At Home" to my friend of Dr. G. S. Thomas of 22930 Lake Park Ave. Chicago, or 177 La Salle St., in said city, 1 large frame picture to Mrs. Wayne. Mrs. Piper's friend No. 10 Q street in city of Washington,—1 large picture framed to my sister Mrs. Victoria A. Whitney, Newport Maine. I give to my said son Edwin B. Hay for Miss Nellie Smith of No. 2020 Arch St. Philadelphia, Pa. 1 large framed picture—landscape in Yosemite valley, 1 framed picture of Eupitona to Mr. George A. Darling of the city of Washington; 1 framed picture of the White mountains to Mrs. Sampson our neighbor at the corner of Corcoran and 18th street. The two small pictures hanging in my sitting-room over the organ—Western views to my brother-in-law John C. Hayward, at Buena Vista Co. Iowa. The other pictures (oil paint-

ings) I direct that he shall, in his judgment bestowed upon some
to be made of use*
charitable and educational institution, where they can be appreciated. I direct that there shall be given to William J. Hay and his wife 1 large framed picture oil painting—if not any two of the smaller paintings, that they may select. It is desired by me and directed that the pictures shall be boxed and shipped by express prepaid to the parties herein named. I wish and direct that he the said Edwin B. Hay shall dispose of furniture at public and private sale and gove the proceeds to the Home for Incurables in the said city of Washington. The organ, if a sale is not practicable, I give and bequeath to Washington Lodge No. 15 Benevolent and Protective Order of Elks—I desire and direct my microscope and appendages to be given by my executor to some educational institution for the advancement of science, as far as possible to do so—regarding the steel-plate etchings I trust the executor may be able to use to some advantage that so much
169 work may not be lost to art. I desire that all papers, letters of mine etc., in the attic and elsewhere, shall be destroyed that are not considered of any value, the loose pictures and engravings are to be preserved. I give the executor the same privilege regarding the books as the microscope that is to bestow them upon some educational institution. The scales being considered as a part of the appendages of the microscope.

I make name and appoint Edwin B. Hay as the executor of this my last will and testament and desire and request that he shall qualify without the usual bond. I sign this my last will and testament—revoking all other wills by me made, this 6th day of December A. D. 1892, and direct him in his duty as executor first of all to purchase a lot

Torn out.* Creek cemetery or Oak Hill and my wife shall rest there side by side and over us erect a monument of modest style, and I direct that the sum of one thousand dollars shall be set apart for the funeral expenses the purchase of said lot and the erection of said monument.

Witness my hand and seal.

RICHARD U. PIPER. [SEAL.]

Signed, sealed and declared by Richard U. Piper as his last will and testament in our presence on this 6th day of December A. D. 1892 and we at his request and in his presence, and in the presence of each other have signed our names as witnesses thereto.

G. S. HINE,
Cor. Broadway and Grove St.
MARY E. JOHNSON,
Saratoga, N. Y.
FRANCES E. HINE,
Saratoga, N. Y.

* * * * * * *

[* In pencil in copy.]

170 MONDAY, *April* 12, 1897—3 o'clock p. m.

Met, pursuant to agreement, at the office of A. A. Hoehling, Esq., # 1416 F St. N. W., city, to take testimony on behalf of the complainant.

Present: A. A. Hoehling, Esq., counsel for the complainant; E. F. Leighton, Esq., counsel for the defendants, and Mrs. Margaret Murray, examiner.

Whereupon LOUIS KAUFMAN, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your name, place of residence, and occupation. A. Louis Kaufman; # 620 H St. northwest, in this city. I am a retired merchant.

Q. What was your occupation, Mr. Kaufman, before you retired? A. In the clothing business, at # 307 Seventh street, since 1862.

Q. When did you retire from that business? A. Last October.

171 Q. Where were you engaged in business during the years 1887 to 1892 and 1893? A. # 307 Seventh street northwest.

Q. Are you acquainted with Mr. Edwin B. Hay? A. I am.

Q. How long have you known him? A. Fully twenty years.

Q. Are you acquainted with the defendant Richard U. Piper? A. I know him; yes, sir.

Q. When and under what circumstances did you first meet him? A. He used to come to the store with Mr. Hay, at # 307 7th St., and he would leave his order for some clothes, which I always had to make to order. That dates back, I guess, to 1886 or 1887 and up to four or five years ago.

Q. During that period how frequently do you think Mr. Piper visited your store? A. I suppose Mr. Piper has been to my store twenty times or more—fully twenty.

Q. Do you know whether or not during that period he had all his clothes made at your store? A. That I don't know, but I am pretty sure while he was in Washington he got everything from me in the clothing line.

Q. Did you ever have occasion to go to the house in which Mr. Piper lived at that time? A. Never been in his house, sir.

Q. Did Mr. Piper ever come to your store otherwise than in company with Mr. Hay? A. He would come sometimes alone, like this: He would always come with Mr. Hay to select them,

172 and then when the clothes were finished I would send them with a receipted bill and Mr. Piper would come alone to pay for them, sometimes by check and sometimes with money, but he never came to buy anything without Mr. Hay being with him, because he used to ask Mr. Hay's opinion of anything two or three times before he would buy it.

Q. Upon the occasions of any of these visits by Mr. Piper to your store did you ever have conversation with him upon any subjects

other than relating to the clothing he was buying? A. Oh, yes; he would come there and he would sit down, and Mr. Hay would tell him to sit there and wait until he came back, and he would go out, and Mr. Piper would sit and talk, and I remember often—about a half dozen times—he told me he had adopted "Ned" (he always called him "Ned"), and he would say, "He is my boy." I asked him once whether Mr. Hay was living with him, as I had an idea he was, and he said, "No; I am living with Ned. He is my boy, and I am going to build him the house," and he told me that he had adopted him, and that "Ned" was to take care of him for that, and he was to leave him this house. Often he has told me that.

Q. What seemed to be the relations existing between Mr. Piper and Mr. Hay as you observed the same on the occasions of these visits? A. I thought it was the very best of feeling, and I have often spoken of it. He would never buy a piece of goods without asking Mr. Hay's advice upon it.

Q. You say that Mr. Piper continued to come to your store up to within three or four years ago? A. Well, say four or five years; yes, sir.

173 Q. Well, did you at any time prior to the time when you last saw him ever hear him express any change in his feelings or intentions towards Mr. Hay? A. No, indeed. I was real surprised when I heard of the trouble. He seemed to be so attached to him. Mr. Hay would take him by the arm and lead him out to the herdic when his business was over. It was the herdic, not the car. He always seemed to want to do what Ned desired.

Q. You may please state what you supposed to be Mr. Piper's age at that time. A. I should judge about seventy; of course, I may be mistaken.

Q. What seemed to be the condition of his mind during that period? A. I thought he was a pretty shrewd, pretty smart man. He knew just what he wanted and what he ought to pay for it, and he would talk a great deal about the price, and say he couldn't afford it. He was particularly fond of silk vests. I suppose I made him a half a dozen—more than that. I have never been at the house. I had no occasion to go. I would send by the young man employed with me, and deliver the goods to his house in that way.

Q. Where was that house, do you know? A. I think it was Corcoran street; somewhere northwest. I had never been there, but this young man told me that it was there and what a pretty house it was.

Cross-examination.

By Mr. LEIGHTON:

Q. You were introduced to Mr. Piper first by Mr. Hay; that is when you first met him? A. Yes, sir.

174 Q. I suppose Mr. Hay had been in the habit of trading at your store? A. Twenty years ago I made clothes for him.

Q. Do you recall what year it was that you first met Mr. Piper?

Was it 1886 or 1887, or what? A. He had been dealing there for several years. I supposed it commenced in the year 1886 or 1887.

Q. Did he ever come to your store except on business purposes? A. Never came on any other except in connection with his clothes.

Q. And you say when he ordered a suit Mr. Hay came with him? A. Yes, sir.

Q. Did he ever order a suit that Mr. Hay wasn't present? A. Not to my knowledge.

Q. What hand had Mr. Hay in the purchase of the goods? A. None in the world.

Q. Just seemed to be there to give his opinion? A. Yes, sir.

Q. The goods were paid for by Mr. Piper? A. Always. He would bring a check or the money himself. I would send the garments to him with a receipted bill, and next day he would come and pay for them, sometimes by check on the Central national bank, and sometimes he would give me money.

Q. When was the last time you saw Mr. Piper? A. That I couldn't say. I haven't seen him for three years or more.

Q. And the last time in your store? A. The last time at the store, likely four years ago.

Q. Was he in the habit of coming to your store more than
175 once a year? A. Oh, yes.

Q. Twice a year? A. Twice a year, at least.

Q. How soon after he first came there did he have this conversation with you that you speak of about building this house for Hay? A. I couldn't remember that.

Q. Do you recall that he has had a conversation of that kind with you? A. Yes, sir.

Q. Do you recall when he first made a statement of that kind to you? A. No, sir.

Q. Do you recall whether anybody was present except yourself and Mr. Piper? A. Clerks.

Q. Do you recall how the conversation happened to come up? A. I cannot even say that.

Q. Whether it was voluntary or not? A. Oh, I wasn't prying into his business. I never asked him anything about it except once, when he spoke of adopting Ned as his boy. I did ask him if he was living with him—that is, if Mr. Hay was living with him—and he said, "No; I am living with Ned. I have built him a nice house, and he is to take care of me for that during my lifetime." He told me that at least a half dozen times.

Q. Half dozen times? A. At least.

176 Q. How do you happen to remember it? A. Of course, I have often remarked that he had fallen into a good thing; that the old man had adopted him, and that he must have taken a liking to Mr. Hay. I have spoken many times of that. He would talk to me, and would say he had adopted "Ned" as his boy, and he had built him a nice house there; told me when the house was being built and that it — for Ned at least half a dozen times.

Q. The first conversation of that kind that you had with him was in connection with his building a house? A. He had remarked

that he had bought a lot--kind of a corner lot, I think—and he was going to build a nice house. He would come down again, and Mr. Hay would leave him while he went out to attend to his business, and this conversation would come up while Mr. Hay was away, and then he would say these things.

Q. How did Mr. Hay act towards Mr. Piper? A. Kind; very kind to him all the time.

Q. Showed him a great deal of attention? A. Treated him very nice; very nice to him, and very respectful.

Q. Did he ever call Mr. Hay his son in your presence? A. He would always call him Ned.

Q. Never addressed him that way before you? A. Never addressed him as son before me to my knowledge.

Q. When he first commenced to trade with you, where did you send his goods? A. I think the first year it was on some other street, some other house. I can't remember just where it was, but I think it was at some other house; but all the last orders were sent to this Corcoran Street house.

177 Q. Mr. Kaufman, do you remember whether all these conversations took place when you commenced to send your goods to Corcoran street? A. I don't really know that.

Q. Did Mr. Piper have as many as two suits a year, do you know? A. Well, I know he left his order there—sometimes for a coat and vest, sometimes for a pair of pants. If I had my books I could tell you that, but we had a fire, and I am not sure that I have the books.

Q. You have no recollection of it yourself? A. I have made him a good many clothes, but I don't know that I could positively say whether it was two suits in one year; sometimes, as I say, it would be a pair of pants or a vest or a coat or a coat and vest.

Q. Did it average that? A. He would come there twice a year. Whether he left his order for a complete suit, as I call it, or not, I can't say, but he would leave an order twice a year, at least.

Q. He didn't tell you what Hay was to do for him, except in that general way, that Hay was to take care of him? A. No, sir.

Q. Didn't say whether that meant to board him or not? A. I don't know of that.

Q. Just the general expression, that he was to take care of him? A. He would talk with me at the store, and he said that he had adopted Ned as his son, and he was going to leave him this piece of property, and that he is to take care of him for it. What he
178 was to do, I don't know. I never went into his affairs. I thought he knew what he was talking about, and he said Ned was to take care of him.

LOUIS KAUFMAN.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Whereupon ALBERT T. COUMBE, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. Please state your full name, your residence, and your occupation. A. Albert T. Coumbe; #905 N St. northwest. I am in the real-estate business, and my office is at #1425 New York avenue.

Q. How long have you been in the real-estate business? A. I suppose fifteen years.

Q. Do you know Mr. Edwin B. Hay? A. Very well.

Q. How long have you known him and how intimately? A. Very intimately. We have been occupying the same office, I suppose, for fifteen years. Maybe I have known Mr. Hay for probably sixteen years.

Q. You still occupy the same office? A. We occupy the same office at this time.

179 Q. Are you acquainted with the defendant Richard U. Piper? A. Yes, sir.

Q. When and where and under what circumstances did you first meet him? A. I think I met Dr. Piper, perhaps, in 1883 or 1884. He came to our office and Mr. Hay introduced him to me. I think he was on a visit to Mr. Hay's house at that time.

Q. Do you know whether upon that occasion he was accompanied by his wife, Mrs. Piper? A. I don't remember at this time.

Q. Well, after you first met him at that time did you see anything more of the Doctor? A. He used to come to the office frequently. I think that he had been associated in some handwriting case in the West with Mr. Hay, and he used to come and talk about that. I met him in that way.

Q. Was Dr. Piper an expert in handwriting? A. Yes.

Q. How long did he continue to remain in the city of Washington at that time? A. I don't remember just exactly how long he remained at the time after our first meeting.

Q. Do you think it was as long as several weeks? A. It may have been several months, I think.

Q. You say he was living at Mr. Hay's? A. I know he was visiting Mr. Hay at his house on P St.

Q. During that time did you ever visit Mr. Hay? A. Yes.

Q. Did you see the Doctor there? A. Yes; the Doctor was there.

180 Q. Was Mrs. Piper there? A. I have seen Mrs. Piper there, but at the time I first became acquainted with the Doctor I don't remember whether I met her then or not.

Q. At that time what seemed to be the relations existing between Dr. Piper and Mr. Hay? A. Well, the most affectionate relations that you could imagine, even between a father and son. I guess it was some little time after I met him that he consulted me with reference to buying a lot for the purpose of building a house. I don't remember what year this was, but I know he said he wanted to build a larger house; that this P Street house was not large

enough for him, and I submitted several pieces of property for his consideration.

Q. Did he or not make any statement to you as to why the house in which they were then living was not large enough? A. Yes; he said he expected to live with Edwin, as he called him, and the house was not large enough to accommodate both families—that is, Dr. Piper and his wife and Edwin, as he said, and his family.

Q. You say that he consulted you with reference to purchasing a lot. Did you assist him? A. Yes; I tried. It was my business to sell him a lot if I could, and I submitted quite a number, but he subsequently purchased on Corcoran street, against my judgment.

Q. Did he purchase that Corcoran Street lot through you? A. There are two lots there. No; not through me.

Q. How long after the purchase of that lot was it before he started to build a house, if you know? A. Well, I don't remember the exact time.

181 Q. Was it some little time? A. Yes; I think some months; it may have been a year. After he started to build and the house was being constructed I went a number of times to see it and talked with the Doctor about it, as I felt some interest in it.

Q. Did you have any talks with him about the house itself and its arrangement? A. Yes, indeed; we talked over the plans and the arrangement of the house. Of course, I felt a little interest, because I knew the house was being built for Edwin and Florence, as he called them. He talked of Edwin very affectionately; more so than most people do of their own children. He seemed to have the greatest affection for Edwin and Florence, and he told me a number of times that he was building that house for Edwin and Florence.

Q. What statement, if any, did he make to you at any time with reference to the relations existing between himself and Mr. Hay? A. Well, he always told me that Edwin, as he would say in his quick way of talking, was his son and Florence his daughter, and that he looked upon them as his children. I know the small children used to call them grandpa and grandma, and there was the most intimate and the most cordial relations. If Edwin had been his child by nature there could not have been more affection between Dr. and Mrs. Piper and Mr. Hay. I say this for the reason that Mr. Hay and I have been associated together every day for the past fifteen years. Dr. Piper would come into the office and say, "Where's Edwin?" and if he did not find him in he would sit down and discuss various matters with me. He was a scientific

182 man and quite a good painter. I went to the house several times and he showed me some of his pictures. He used to talk about building this house. Of course, if you were building a house for a son you would not come in day after day and say, "I am building a house for Son John," and the next day, "I am building a house for Son John;" but all his talk was of his great affection for Edwin and Florence, and that Edwin and Florence were to have everything on his death.

Q. In what way, if at all, did Dr. Piper refer to the children of

Mr. Hay? A. Well, I don't know that he referred to them very much. One little girl that died, I remember he was particularly fond of. I think her name was Bessie; after Mrs. Piper she was named; I think Elizabeth Piper Hay. She died while they were in the P St. house and the Doctor expressed great grief at her loss. The other little ones always spoke of them as grandma and grandpa.

Q. Did you ever visit the family in their new home? A. Yes.

Q. Ever spend the evening there? A. Yes, sir.

Q. In what way, so far as you observed upon these visits, was Dr. Piper treated by Mr. and Mrs. Hay? A. With the greatest affection and, it is hardly necessary to say, respect. They looked upon Dr. Piper just as I would upon my father and mother. That relation seemed to exist all the time. I have frequently been in Dr. Piper's room. He had a number of paintings and seemed to take great interest in showing them to me.

Q. In what way was Mrs. Piper treated during that period?

183 A. As far as I know, in the most affectionate manner. Dr. and Mrs. Piper were very affectionate towards each other, and, as far as I know, there was never any ill-feeling at all between any of the family, or, rather, the two families.

Q. Did you ever witness any evidence of disrespect shown by Mr. Hay's children toward Dr. Piper and his wife? A. No, indeed.

Q. How did they all seem? A. They seemed just like one family; more affectionate than most families are.

Q. Seemed to be happy? A. Oh, yes; indeed.

Q. In what manner was that house kept, whether it was well kept or otherwise? A. It was very nicely furnished, everything in good style, almost luxurious.

Q. Do you recall, Mr. Coumbe, when Dr. Piper left the city? A. I don't. I probably know of the time, but I don't remember dates.

Q. It has been a few years ago? A. Yes, sir.

Q. Did you continue to see him from time to time up to the time when he left? A. Yes; he would come to the office very frequently and we would talk over different matters. He did that up to the time he left, about two or three years ago, perhaps.

Q. Now, up to the time when he went away, so far as you know, when he had these conversations with you, did you ever hear him express himself as having changed in his intentions towards Mr. and Mrs. Hay? A. No, indeed.

184 Q. Did you ever hear him say that the relations existing between them had ceased to exist? A. No.

Cross-examination.

By Mr. LEIGHTON:

Q. You first knew Dr. Piper through Mr. Hay? A. Yes, sir.

Q. Do you know when Mr. Hay first became acquainted with him? A. No; I do not.

Q. Do not know whether it began about the time you were introduced to him? A. No.

Q. That was the first time you had heard of him? A. That was the first time.

Q. You don't know that it was about that time Mr. Hay became acquainted with him? A. I don't know.

Q. I think you said that his acquaintance began through his being associated with Dr. Piper in a handwriting case out West? A. Yes; that was my impression, that they had been associated on this case out West. I don't know when their acquaintance began, but I was under the impression that they had been associated in a case out West, as they used to talk of it.

Q. He was staying at that time at Mr. Hay's house? A. On a visit then at Mr. Hay's P Street house.

Q. How do you know he was visiting? A. He told me and I have seen him there.

185 Q. Was his wife there? A. I don't remember.

Q. How large a house is that? A. I think it is a house of ten or twelve rooms.

Q. Who composed Mr. Hay's family at that time? A. I think his present family, with the exception of the last child, by the name of Paul.

Q. Who are they? A. Mr. and Mrs. Hay and Jewel and Ned, and there was a little girl, I think, by the name of Bessie, that died there. I think that these were all of Mr. Hay's family.

Q. Did he have anybody else in the house except his own family? A. A lady by the name of Mrs. Kearfott.

Q. Resided there continuously? A. I don't remember now whether she lived there then or not.

Q. Was that house owned by Hay? A. Yes, sir; it was owned by Mr. Hay.

Q. And it wasn't large enough to accom-odate both families? A. Yes; that was the reason for building the new house.

Q. He bought this property on Corcoran street, you say, against your judgment; was it against Mr. Hay's judgment? A. I don't know. I don't think Mr. Hay expressed any opinion in the matter.

Q. The house was built by the Doctor, was it? A. The house was built by the Doctor, so I understood.

Q. Do you know anything about the furnishing of the house; by whom it was furnished? A. I do not.

186 Q. You say it was elegantly furnished? A. Comfortably furnished; everything very nice. I know that Mr. Hay's furniture from the P St. house was moved to the Corcoran Street house.

Q. You don't know what part was furnished by Dr. and Mrs. Piper? A. I do not.

Q. You don't know upon what terms they lived there? A. Well, only that they were to live there jointly.

Q. How do you know that? A. It was told to me a number of times by Dr. Piper that they were going there to live as one family. The Doctor told me time and time again that they were to live there as one family, and that Edwin was to have his house at his death.

Q. You say that their relations were very affectionate? A. Most cordial and affectionate.

Q. Will you state how that was manifested? A. Why, just as a father would manifest affection toward his son that he was on good terms with.

Q. Did he ever call him son? A. Often.

Q. In your presence? A. Always, I believe; Edwin or Son Edwin. He was a very quick-talking man, and he would say "Edwin" or "my son Edwin." Of course, he did not always say son, no more than any father would in talking of a boy, but he has very often done so.

Q. Because of that affection that existed he told you that he was to give him that property? A. Many times, and, of course, that was understood by every one.

187 Q. And it was because of his affection that he was going to give Edwin this property? A. That was what he was building it for.

Redirect examination.

By Mr. HOEHLING:

Q. What were the mental characteristics of Dr. Piper? A. I always considered the Doctor a very brilliant and smart man—a very intellectual man.

Q. His mind seemed to be all right during this period? A. All the time that I knew him he had the brightest mind. He was a scientist and took great interest in scientific matters. I considered him a bright man.

ALBERT T. COUMBE.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY,
Examiner in Chancery.

Whereupon GEORGE A. DARLING, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name, place of residence, and occupation. A. George A. Darling, #418 Spruce street northwest, this city. I am a clerk in the Treasury Department, Sixth Auditor's office.

188 Q. Are you acquainted with Mr. Edwin B. Hay? A. I am.

Q. How long and how intimately have you known him? A. About twenty years quite intimately.

Q. Are you acquainted with the defendant Richard U. Piper? A. I am.

Q. When and where did you first make his acquaintance? A. I first met Dr. Piper in 1883 at Mr. Hay's house, #1535 P street.

Q. At that time was he accompanied by his wife? A. Mrs. Piper was with him. I took dinner with them at Mr. Hay's.

Q. How long did he remain at Mr. Hay's house on that occasion? A. I should say possibly five or six weeks. I don't remember positively.

Q. The Doctor and his wife? A. Doctor and his wife; yes.

Q. How frequently did you see them? A. I saw them several times during that visit. I can't say exactly, because my memory is not very clear about that. I know we took them out driving, and I think it was that time that I took Mr. and Mrs. Piper to the theatre; no, I believe it was Mrs. Piper and Mrs. Hay.

Q. Did they call upon you during that time? A. That I am not sure about.

Q. What seemed to be the relations existing at that period between Dr. Piper and Mrs. Piper and Mr. Hay and his wife? A. Of
189 a most friendly and affectionate character; exceedingly so. In fact, I was struck with the friendly and very cordial relations existing between them.

Q. In what way, if at all, did Dr. Piper refer to Mr. Hay? A. Always referred to Mr. and Mrs. Hay in later times as his children; always called Mr. Hay "Son Edwin." That was a common expression with him; called him that frequently.

Q. Was that at this period—this visit you have just spoken of? A. No; not at the time of the first visit, but in later years after they came back to live here, and while they were living on P street, and afterwards in the house on Corcoran street.

Q. Do you know where the Doctor went after leaving Washington on the occasion of the first visit? A. I have understood that he went to California. I have seen letters from there.

Q. How long did he remain away from Washington? A. That I could not say positively. I think three or four years.

Q. Now, when he returned to the city of Washington where did he take up his residence? A. With Mr. Hay, #1535 P street.

Q. Was Mrs. Piper with him? A. She was.

Q. Do you know how long he continued to reside there—in the P Street house? A. Until they moved to Corcoran street; I don't remember the exact time.

190 Q. That covered a period of several months? A. A year and a half, I think, but I am not sure about that.

Q. Upon this occasion of his return to Washington—to Mr. Hay's house—did you resume your visits to the family? A. I did; dined there several times at Mr. Hay's house, and also they called on us; both of them.

Q. In other words, the two families interchanged visits? A. Yes, sir.

Q. What seemed to be the relations existing between Dr. Piper and Mr. Hay and Mrs. Piper and Mrs. Hay on the occasion of their return? A. It was just such as you would expect to find between a father and his children. I never saw anything but the most affectionate feeling manifested between them. I recall one incident that impressed itself upon my mind. It was on one occasion when

I was visiting Mr. Hay at the P Street house. It was in the evening, about nine o'clock, and the Doctor wished to retire. Mrs. Piper was present, and the Doctor got up and said, "Well, Son Edwin, I think I will retire," and he advanced to Mr. Hay, put his hands on his shoulders, and kissed him. Mr. Hay went with him as far as the foot of the stairs, and he went on up to his room. I thought it was remarkable for an old man like him to take such a liking for any one. I said to my wife when we got home that there was certainly great affection existing between Mr. Hay and Dr. Piper, and it struck me very forcibly. I have often heard him call him "Son Edwin," but I have never seen him kiss him since.

191 Q. How many children had Mr. Hay at that time? A. He had three—Ned, Jewel, and one that died, I think. I am quite sure there were three there at the P Street house.

Q. Do you remember when the house on Corcoran street was built and when it was under course of construction? A. I do.

Q. Did you at any time have any conversation with Mr. Piper, either prior to the building of the house or during the time it was building, with reference to the house and the purpose for which it was being built? A. Well, in a general way, Dr. Piper would refer to the house as being built for himself and Mr. Hay, and I understood that they were all going to live there together, and on one occasion, I remember, when I was around in front of the house, I had occasion to call to see Mr. Hay, and they sent me around to the Corcoran Street house. I met Dr. Piper and the house was then in course of erection. It was such a large-appearing house—looked even larger than it really was—that I asked him why he was building such a large house. He answered, "Yes; it is a large house, but I am building it for Edwin and Florence, and they are going to live here and we are going to live with them, and it takes quite a large house to accom-odate all of us. It is to belong to Edwin and Florence, and we want it large enough to start with." That made quite an impression on my mind. I heard him make similar remarks very frequently. It was a common expression to hear him speak of the home as Florence's and Edwin's; he didn't make a concealment of that.

Q. After they moved in their home on Corcoran street, did you continue to visit them? A. Yes.

192 Q. The two families continued to interchange visits? A. Yes, sir.

Q. How was that house furnished? A. Very nicely. I always considered it a charming home.

Q. In what manner, so far as you observed, were Dr. Piper and his wife treated by Mr. and Mrs. Hay? A. Treated just as well as people could be. There seemed to be nothing left undone to make the home pleasant and comfortable; always considered what they would like.

Q. So far as you observed, on the occasion of your visits to the home, did or did not Mrs. Hay regard the wishes of Mr. Piper? A. I don't remember of any occasion when I was there for her to

do that. I don't remember of any incident when she should. It was always just like one family when I visited there.

Q. They seemed to be happy or otherwise? A. Perfectly happy and contented.

Q. Did you ever witness the children of Mr. Hay show any evidence of disrespect towards Mr. and Mrs. Piper? A. Oh, no; they always spoke of them as Grandpa Piper and Grandma Piper; especially the girl, Jewel, more so than the boy.

Q. In what way, if at all, did Mr. and Mrs. Piper refer to the children? A. They were always affectionate; would speak of them as their grandchildren.

Q. Do you know about when it was that Mrs. Piper died? A. It was, I think, in the winter of 1892. I know that I was very ill that fall, and they visited us to say good-bye before leaving for Saratoga in August, 1892, and it was in that winter that she
193 died.

Q. She died in Saratoga, did she not? A. As I understood; yes.

Q. Prior to Dr. and Mrs. Piper leaving for Saratoga, had they been living in this Corcoran Street house? A. Yes; until they left.

Q. Did Dr. Piper ever return to that house after her death? A. I don't think he ever has.

Q. You haven't seen him since that time? A. No; I have not.

Q. What kind of a man was Dr. Piper at the time you knew him in reference to his mental ability? A. A very able, very intellectual man, of great ability. I have talked with him a great many times upon various subjects, and he seemed to be a man of determined character and ability.

Q. Did he seem to be a man of a weak nature or a positive nature? A. Very positive.

Q. How was his health in those days? A. The Doctor was almost always complaining. His health was not good, I don't think.

Q. Did that seem to in any way to affect his mind? A. Not at all, as far as I could discover.

Q. Up to the time when Dr. Piper left the Corcoran Street house, did you at any time hear him express any change in his feelings or intentions with regard to Mr. Hay? A. Never at any time. He made a visit to my house in August, 1893—I should have said 1892. Mr. and Mrs. Hay were out of the city, at the seashore, and
194 they both spoke then in most affectionate terms of Mr. and Mrs. Hay.

Q. Both Dr. and Mrs. Piper? A. Both of them; that was in August, 1892.

Cross-examination.

By Mr. LEIGHTON:

Q. You first saw the Doctor in 1883? A. Yes, sir.

Q. Met him at the house of Mr. Hay? A. Yes, sir.

Q. Do you know whether that was the commencement of Hay's

acquaintance with him? A. I have understood not. That Mr. Hay and he were associated in a handwriting case in the West. I only know this from hearsay.

Q. Was that Mr. Piper's first visit to Washington? A. Yes; so far as I know.

Q. Do you know whether he was visiting Mr. Hay or boarding? A. Visiting.

Q. How do you know that? A. Only from what I heard them say. They spoke of Dr. and Mrs. Piper as making them a visit.

Q. Who said that? A. Both of them. I think it was the general impression that they were on a visit.

Q. You don't know whether they paid any board or not? A. Except as I have stated.

Q. They stayed there at that first time about three months? A. I don't remember just how long it was; five or six weeks, I suppose.

195 Q. Then he went away and was gone for several years? A. For several years.

Q. And you saw no more of him until he came back? A. No.

Q. Did you see any evidences during this first visit of these manifestations of this relation of son and father? A. Nothing more than that there was a very friendly relation between the Doctor and Mr. and Mrs. Hay. The Doctor's manner was exceedingly warm towards Mr. Hay.

Q. During that first visit did he call him "Son Edwin"? A. No; not then.

Q. When was the first time you heard him use that expression? A. It was on the occasion of this visit, after he returned from California.

Q. How long after? A. They had been in the house, I suppose, perhaps some months. I don't remember exactly, but it was on that occasion when I spent the evening there.

Q. On P street? A. Yes. Then he made this remark.

Q. How frequently were you in the habit of visiting them while they lived in the P Street house? A. Very frequently. Mr. Hay's family and my own have been very intimate for many years.

Q. As often as once a week? A. Not so often as that.

Q. Once a month? A. Yes; perhaps oftener, but at least that.

196 Q. When was it that Dr. Piper kissed Mr. Hay on bidding him "good night"? A. One evening in this house on P street.

Q. When was that? A. I guess it was just before they moved in Corcoran street. I have never seen him do that afterwards. I did not happen to be present at any time when he retired and had occasion to do so.

Q. What was the manner of Mr. Hay towards the Pipers? A. Very friendly.

Q. And Mrs. Hay? A. Just as friendly as possible.

Q. How about Mrs. Piper? Was she in the habit of calling him "Son Edwin"? A. She was more apt to do so than the Doctor.

She was of a very affectionate nature; more demonstrative than the Doctor. She was exceedingly affectionate.

Q. Is the Doctor demonstrative? A. Not so much as Mrs. Piper was.

Q. How frequently did you visit them after they moved into the Corcoran Street house? A. Not, perhaps, oftener than once a month, and, of course, I didn't always see the Dr. and Mrs. Piper.

Q. You visited the Hays, principally? A. Yes; and we would exchange visits with the Doctor and Mrs. Piper.

Q. When you visited them did you find Dr. Piper in the part of the house occupied by the Hays? A. Generally they were in their own rooms, unless at dinner or at a company of some kind. Then they would be down in the parlor or reception room; very often they were.

Q. But usually when you were there they were in their
197 own rooms? A. Yes, sir. The Doctor was not fond of mingling with people; rather preferred to be in his room.

Q. Was the Doctor a scientific man? A. I think he was.

Q. What was the line of business which he followed? A. I understood he was an engraver. I think he showed me some drawings, and then he painted some, too.

Q. Do you know what he did for a living? A. I am not positive. I suppose he made a living by his painting and drawing and in that line

Q. Do you know enough about him to know that he was a man of business habits or scientific habits? A. More of a scientific man than a business man, probably.

Q. Wrapped up in science? A. Very much so.

Q. Talked of that to the exclusion of almost everything else? A. Generally; yes.

Q. Did you know when he was building this house on Corcoran street? A. Yes, sir.

Q. And he represented to you that he and the Hays were going to occupy that as a home? A. Yes, sir.

Q. Didn't tell you on what terms? A. No.

Q. Or what the arrangement was between them? A. No; except it was built for their joint accommodation and use.

Q. And because the house on P street was not large
198 enough? A. That was the idea.

Q. Was it built with Dr. Piper's money? A. I suppose so.

Q. You don't know whether it was furnished by Dr. Piper or not? A. I don't think it was. He might have furnished his own rooms, but I am pretty sure the rest of the house was furnished by Mr. Hay.

Q. Do you know what arrangements were made between Mr. Hay and Dr. Piper? A. Only by hearsay.

Q. How did you happen to go to Saratoga in 1892, do you know? A. For his health. He was not well, and they had been advised to go there, as it was represented that the water would do them good.

Q. You never saw him afterwards? A. Never saw him afterwards.

Q. Then your acquaintance with him extended from 1886 until 1892? A. In 1883 I first met him.

Q. But that was the occasion of the first visit, was it not? A. Yes; practically it extended from 1886 to 1892.

Redirect examination.

By Mr. HOEHLING:

Q. Did you ever visit this Corcoran — house during the winter months? A. I did frequently.

Q. During the months that people usually have fires? A.
199 Yes.

Q. How was it kept with reference to heat? A. It was heated by steam and it was quite comfortable. I always supposed that it was perfectly comfortable. Dr. Piper required a good deal of heat, and kept his rooms exceedingly warm. I could not have lived in such a temperature as that.

Q. You have been in his rooms? A. Oh, yes.

Q. So hot you couldn't stand it? A. I couldn't have stood it, but I never require a very great deal of heat.

Q. His rooms were hot nevertheless? A. Oh, yes.

GEO. A. DARLING.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Whereupon Mrs. JULIA F. DARLING, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. Please state your full name and residence. A. Julia F. Darling, #418 Spruce street, in this city.

Q. You are the wife of George A. Darling, I believe? A. Yes, sir.

Q. Are you acquainted with Mr. Edwin B. Hay? A. Yes, sir.

200 Q. How long have you known him? A. About twenty years; since 1876.

Q. Has that acquaintance been intimate or otherwise? A. Very intimate; for the last eighteen years especially so.

Q. Do you know the defendant Richard U. Piper? A. Yes, sir.

Q. How long have you known him? A. I met him first when he came to visit at Mr. Hay's house.

Q. Do you remember in what year that was? A. In 1883.

Q. Where did Mr. Hay live at that time? A. #1535 P street.

Q. Was Dr. Piper accompanied by his wife? A. Yes; with his wife. I went there to dinner.

Q. And Mr. Hay was present with his wife? A. We all dined together.

Q. How long did Dr. Piper and his wife remain in the P Street house on that occasion? A. Five or six weeks, I think, but I am not sure.

Q. Did you visit there from time to time? A. Yes, sir; two or three times.

Q. Did Dr. Piper call upon you during that period? A. Yes, sir; they called and missed me. I took Mrs. Hay and Mrs. Piper to hear Patti. The Doctor declined.

Q. Where did the Pipers go after leaving Mr. Hay's house at that time? A. I think they went to Chicago, and from there to California. I am not sure of that.

201 Q. You know they left the city? A. Yes.

Q. Do you know when they returned? A. I don't remember. Some little time after that.

Q. When they returned where did they go to live? A. With Mr. and Mrs. Hay, # 1535 P street.

Q. Same house? A. Yes, sir.

Q. Who composed the Hay household at that time? A. Mr. and Mrs. Hay and their son Edwin, Jr. I don't think the second child, Julia, was born then. Yes; she was born in 1883. I am not sure about that.

Q. Mr. and Mrs. Hay and their children? A. Yes, sir.

Q. And Dr. and Mrs. Piper resided with them after their return? A. Yes, sir.

Q. How long did Dr. Piper and his wife continue to stay in that P Street house on this second occasion? A. I don't recall exactly. They went away after the first visit and then they came for this second visit, and I don't recall whether they went away a second time or not, but they made their home with Mr. and Mrs. Hay whenever they were in Washington, at this P Street house, up until the time when they moved into the Corcoran Street house, and then they lived there with them—that is, Mr. and Mrs. Hay.

Q. Do you remember when the Corcoran Street house was built? A. Quite a long time ago; I never thought about it until now.

Q. During that period did you continue your visits to the 202 Hay home? A. Yes, sir.

Q. The two families continued to interchange visits? A. Yes, sir.

Q. And Dr. and Mrs. Piper called upon you? A. Yes, sir.

Q. Have you ever spent the evenings at the Hays? A. I have been there to dinner. We were always invited, but on many occasions I have declined the invitation, as I am an invalid and do not go out much. My husband called there more frequently than I did, but I have been there in the evenings, and I have dined there many times.

Q. Now, while the two families, the Hays and the Pipers, were residing in P Street house, what seemed to be the relations existing between them? A. Just as affectionate as they could be; just as you would expect to find children acting toward their father, and they always spoke of them as their children.

Q. Who do you mean by "they"? A. Dr. and Mrs. Piper.

Q. How did Dr. Piper refer to Mr. and Mrs. Hay? A. I don't think I ever heard him call Mrs. Hay anything but Florence; but I have often heard him call Mr. Hay "Son Edwin." I think he always called Mrs. Hay Florence when speaking to her, and Mrs. Hay when speaking of her. Sometimes he would call her Florence when talking of her to me.

Q. In what way have you ever heard Mrs. Piper refer to them, if at all? A. She always called them her children; her son and daughter.

Q. Was she an affectionate woman? A. Very; very beautiful and affectionate wife and friend.

203 Q. What seemed to be the mental characteristics of Mr. Piper? A. I thought he was quite a bright man, quite an amiable man. He was considered generally, I think, as an eccentric gentleman.

Q. Did you think then that his mind was weak? A. I saw him up until he went away. He came to pay me a farewell visit just before he went away. Mr. and Mrs. Hay were away then, and at that time he seemed rather feeble, but his mind was clear; always was clear, I think.

Q. Now, did you visit the two families after they moved into their Corcoran Street house? A. Yes, sir.

Q. Frequently or otherwise? A. As frequently as before; not more frequently than several times in a year. My husband called more frequently than I did.

Q. What kind of a house was it? A. A delightful home, charming.

Q. How was it furnished? A. Elegantly, for their means.

Q. Did it seem*ed* to be well arranged for the two families? A. Very.

Q. What part was occupied by the Pipers? A. I think Dr. and Mrs. Piper had three rooms—maybe four, but at least three—on one side of the house and Mrs. Hay had the rest of the house.

Q. It is a double house, is it not? A. Yes, sir; and a hall in the center.

Q. Did you ever visit them during the winter months? A. Yes, sir.

204 Q. Did you ever notice the condition of the house during the winter months as to heat and cold? A. It was always very comfortable, very warm, oppressively so to me. I am very susceptible to the heat, but the house was certainly very comfortable to even a cold-natured person.

Q. Did you ever during these winter months go in Dr. Piper's apartments? A. Yes, sir.

Q. What was the condition there? A. Very warm, indeed hot. My face got very red, just as it has here, and Mrs. Piper, noticing it, asked me if she should open the door, but I told her that I was comfortable, but that I was subject to smothering spells. I did feel the heat very much and I did not mean to tell an untruth about it, but I did that so as to make her mind easy, and after a little while I left the room. I had been over in Mrs. Hay's room and he was

so warm in there that she had turned the heat off for my benefit. I think it was on this occasion that when I left the rooms of Doctor and Mrs. Piper, Mrs. Piper took me down to the dining-room to show me the room. They had been there several months, but it had not been painted until just before this, and she wished me to see the tint. It was quite dark and she said that it was terra cotta. I remember she said when we were going down that she would show me her dining-room, and then, as if reconsidering what she had said, *say* remarked, "I say 'my' dining-room. Of course, this is Florence's house, but they are our children, we are all one, and this is our home."

Mr. LEIGHTON: That part of the answer stating what Mrs. Piper said is objected to as irrelevant, not being a state- made by
205 either of the defendants.

Mr. HOEHLING:

Q. Upon this occasion that you were in Dr. Piper's rooms, will you state if it was oppressively warm? A. It was for me.

Q. What statement, if any, did Dr. Piper make? A. He spoke of it being Edwin's house, and his having steam heat in it, and said that he required considerable heat, more than most people did, and that he had had a Franklin stove put in a short while before so that he could regulate his rooms; that the house was Edwin's, and that they could have the rest of the house as they liked, and that he was going to regulate his rooms as he liked, and that he had had the stove put in, and he had the steam heat in there also.

Q. Now, when they were in their Corcoran Street house, what seemed to be the relations existing between Mr. and Mrs. Hay and Dr. and Mrs. Piper? Had they changed from what they had been? A. No, sir; never.

Q. Did or did not Mr. and Mrs. Hay seem to treat Dr. and Mrs. Piper with consideration? A. Very great consideration. Mr. Hay treated him with affection. Mrs. Hay probably is not so demonstrative as Mr. Hay, and where other people would manifest their love and affection for others she would not, although she thought just as much of them. Mrs. Hay treated them very kindly, and treated Mrs. Piper as a mother, I think.

Q. Did Doctor and Mrs. Piper seem to be happy and contented in their home life? A. Yes, sir.

Q. Did you ever observe any treatment on the part of Mr.
206 Hay's children toward Dr. and Mrs. Piper showing disrespect?

A. Never. I wasn't there enough to see. Never when I was there.

Q. How did the children of Mr. Hay refer to Dr. Piper? A. I don't think I heard them refer to them except Jewel, the girl, later on used to call him Grandpa Piper, but I don't remember positively whether I ever heard the boy call him that. Mr. Hay, I think, called him Doctor, and I don't remember of his calling him anything else, but Mrs. Piper Mr. Hay always called Mother Piper.

Q. How did she address him? A. Son Edwin, I think.

Q. Just prior to their leaving for Saratoga they called upon you? A. Yes, sir.

Q. I understand you went driving with them on several occasions? A. I took them to Arlington.

Q. Up to that time had there been any change in the relations existing between the parties? A. Nothing, that I was aware of.

Q. Up to that time had you heard Dr. Piper express any change of feelings toward Mr. and Mrs. Hay? A. No, sir; never.

Q. Mrs. Piper, I believe, died after she left the city, didn't she? A. She died the next winter in Saratoga.

Q. Has Dr. Piper ever returned since that time, so far as you know? A. No, sir.

207 Cross-examination.

By Mr. LEIGHTON:

Q. When *did* Dr. Piper called to see you before leaving for Saratoga, did he express any purpose of returning? A. Oh, yes, sir.

Q. Say anything about it? A. I think so; yes, sir.

Q. When did he say he was coming back? A. I don't recall, but he was only going for two or three months.

Q. Is that just an impression of your mind or information gained from conversation you had with him? A. I think that he told me that they were to be gone a couple of months.

Q. Was his wife ill at that time? A. No, sir.

Q. Was he ill? A. Feeble. It was in August and the weather was very warm.

Q. Mr. Hay and his family were away from home? A. Yes, sir.

Q. They were there alone? A. Yes, sir.

Q. Hay's wife was gone? A. Yes, sir.

Q. When did this conversation with reference to this Franklin stove in Dr. Piper's room take place? A. I don't remember just what date that was. I think it was the time Mrs. Piper showed me the dining-room, and that was some time after they had moved in the house.

208 Q. Shortly after the house was finished? A. About a year. The dining-room was not painted until they had been in the house some time.

Q. Dr. Piper stated to you that he was not satisfied with the heat on that occasion? A. He didn't say that. He said, in speaking of the room being very warm, that he required more heat than most persons.

Q. And the heat furnished by the steam was insufficient, so he put in the Franklin stove to make it warm enough? A. He didn't have it all the time, but as far as the heat was concerned I had just been in Mr. Hay's room and it was so warm she had turned the steam off.

Q. From what he said to you, didn't — state in substance that they required their part of the house cooler than he wanted his rooms? A. I didn't take it that way. I took it that he wanted to convey the impression of why he had the stove put in, and, as he

saw my face so red, it was a kind of an apology for having the room so warm.

Q. And he wanted it independent of the other part of the house; wanted it warmer? A. Said he had had the Franklin stove put in; that he liked open fires; that he wanted a different kind of heat, but Edwin had had this kind; that he had had the stove put in a short while before.

Q. When they lived in the house on Corcoran street, how frequently did you visit them? A. I went there about six or eight times a year; my husband went more frequently. I didn't always go to Mrs. Piper's rooms, but I went many times, and I met
209 them in the home.

Q. Usually when you went there they were up in their rooms? A. Yes, sir; unless at dinner or at a company of some kind.

Q. And you went to see Mrs. Hay? A. I say I most always saw him.

Q. When you would go to his rooms? A. Yes, sir.

Q. He didn't mingle with the family? A. Not so much. When I made a call it would be probably in the forenoon, between breakfast and lunch, and they would be in their rooms.

Q. You say that Mr. Hay was very affectionate in his manner and conduct toward Mr. Piper. State how he manifested that. A. Just as any son would act toward his father. I thought Dr. Piper was more affectionate than Mr. Hay.

Q. How did he show it? A. In his words and actions. Called him Edwin and Son Edwin, and said they were his children.

Q. Did they ever have any children? A. No, sir.

Q. How many children has Mr. Hay? A. He has three now.

Q. You say Mrs. Hay is not so demonstrative in her nature as Mr. Hay? A. No, sir; she would *do* doubt feel just as much, but would not show it. She is a lovely, warm, sincere woman.

Q. What do you mean by that? Isn't Mr. Hay a sincere
210 man? A. What I mean is she is not as demonstrative as her husband. She would not show her feelings so plainly, although she would feel just as much.

Q. How did she manifest that towards the Pipers? A. She was always kind.

Q. What did you see that *lead* you to think that she was always kind? A. In her actions towards them. She was solicitous for their comfort and pleasure. She would take Mrs. Piper into society and introduce her to her friends.

Q. They were never ill, so far as you know, while they were there? A. I think Mrs Piper was ill there about a year before she left.

Q. And Mr. Piper? A. He was not ill, but very feeble some time.

Q. Was their health such as to require any care? A. No; no especial care.

Q. How frequently did you see them during their first visit to the city? A. I don't think I saw them more than two or three

times. I took them driving to Arlington, and I invited Mrs. Piper and Mrs. Hay to hear Patti. The Doctor declined.

Q. That was during the first visit? A. Yes, sir; they came for a short while, but they remained five or six weeks.

Q. Do you know where they came from A. No, sir.

Q. That is the first you know of them? A. Yes; I think they came from Chicago.

211 Q. How frequently did you see them after they came back from their Western trip; how frequently did you visit the Hays? More than once a month? A. Not more than that.

Q. Did you as frequently as that? A. I don't think I did. I might have done so on an average, but not at all times.

Q. Was it the habit of Dr. Piper to mingle with the Hay family? A. Yes; when it was the time for dinner or to go into the reception-room or parlor or sitting-room; then they were together.

Q. What do you mean by that—*I* immediately after meals and before meals? A. Yes, sir. Dr. Piper was never in the habit while here to be with the family after nine o'clock. He would say then that it was time to retire. Sometimes Mrs. Piper would remain longer, and then she would go up, too.

JULIA F. DARLING.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY,
Examiner in Chancery.

212 Whereupon Mrs. PACIFIC PEARL MULLETT, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name. A. Mrs. Pacific Pearl Mullett.

Q. And your residence. A. # 1731 R street northwest, Washington.

Q. You are a widow, are you not? A. Yes, sir; the widow of A. B. Mullett, who was formerly an architect in the State, War, and Navy Department.

Q. Of this city? A. Yes, sir.

Q. How long has your husband been dead? A. Since 1890.

Q. I believe you are acquainted with Mr. Edwin B. Hay. A. Yes, sir.

Q. How long have you known him and how intimately? A. I have known him since he was a boy. I have known Mrs. Hay since just before their marriage. I have known both of them intimately for twelve or thirteen years. I go to the house once at least every week, and sometimes two or three times, and have been doing so for a long time. One of their children is my god-child. I am as intimate with them as it is possible to be.

Q. Do you know Mr. Richard U. Piper? A. Very well.

Q. When and where and under what circumstances did you first

meet him? A. I was introduced to him at Mr. Hay's house on P street. This was the time of his first visit. I don't remember what year it was, but it was on the first occasion of his coming to Washington. After that they went away.

213 Q. Was Mrs. Piper with him? A. She was.

Q. And you met her? A. Yes, sir.

Q. About how long did they continue at Mr. Hay's home during that visit? A. That I don't remember. I think it was only a few months.

Q. Then you say they went away? A. They went away, yes, and returned again. I think it was then that they began to live with Mr. Hay. I know they were very anxious to come, and Mrs. Hay objected at first. She said that she was afraid that they could not make it comfortable and pleasant for old people; that they were old people, and their mode of life was very different from hers, and that she was afraid she could not make it pleasant for them, and that, besides, she had a young baby that needed her attention.

Q. Did they come? A. Yes, sir; to P street, and they had rooms on the third floor, but the Doctor did not have room enough. I remember him stating to me that he had no place for a studio and no place to put his paintings. He had quite a number of paintings of scenes in California.

Q. How many rooms on the third floor did they occupy? A. I think they only had two then, because that was all there was for them.

Q. How long did they all occupy together the P Street house? A. I think the new house was begun or they went into the new house about 1886 or 1887. That was when Mr. Mullett

214 finished the plans and submitted the house.

Q. What did your husband have to do with the building and planning of that house? A. He had everything—Mr. Mullett and my eldest son, who was his father's partner and assistant. They had the entire planning of the house, and Mrs. Hay had the principal say about what was to be done here and there. The Doctor would not say anything, but would send Mr. Mullett to her. He would say, "This is being built for Edwin and Florence, and whatever they wish have it done."

Q. Your husband was the only architect consulted? A. Yes, sir; he had the entire supervision of it.

Q. Did Dr. Piper and your husband have conversations in your presence in which the house was spoken of? A. Many of them in the office and in my home. They would come over many times—that is, Mr. and Mrs. Hay and Mr. and Mrs. Piper—and talk over the plans, and then I used to drop into the office and I found Dr. Piper there a great many times, and I heard a great many conversations between them. A little matter that will show you how he felt about the house: Mrs. Hay was around looking at the house, and Mr. Mullett wanted box shutters and Mrs. Hay didn't want them, and Mr. Mullett turned to the Doctor and said that it would incur quite an additional expense to change them. The Doctor

insisted that the change be made, as he wanted it to please Mrs. Hay. So the shutters were all torn out and fixed as Mrs. Hay wished them. The Doctor wanted hot air and Mr. and Mrs. Hay wanted steam heat, and Mr. Hay paid for the heating apparatus, as well as for the chandeliers and the mantels. I saw the vouchers for them and know that he did so.

215 Q. What, if anything, did you ever hear Dr. Piper say prior to the building of this house as to the reason why he was going to build it? A. Because the house on P street was too small for them all to live in, and the feeling between them, as I observed it, was such as a father would feel for a son and daughter. Both Mrs. Piper and the Doctor gave me to understand that they were building this house to be used by the Doctor during his lifetime, and afterwards it was to be Mr. and Mrs. Hay's; that they were building it for them, and they wanted a larger home. The Doctor had three or four rooms in the house on Corcoran street.

Q. Do you know whether or not that in planning for the construction of that Corcoran Street house it was arranged with reference to the convenience of both the Hay family and the Piper family? A. Yes, sir; decidedly so. I thought it was a very fine arrangement. As far as I could understand, it certainly was. Mrs. Hay gave up a great deal to the Doctor and Mrs. Piper; it was just like one family. The relations between Mr. and Mrs. Hay and Mr. and Mrs. Piper was just like that between parents and children. I never saw anything to lead me to think otherwise.

Q. What were the relations between them—that is, between Mr. Hay and the Doctor—while they were living in the P Street house? A. Very affectionate.

Q. How was that demonstrated? A. Mr. Hay used to put his arms around Mr. Piper, and they would act towards each other just as I would act with one of my boys. The Doctor was very affectionate.

216 Q. How was it with Mrs. Piper? A. More so than the Doctor, even. The Doctor was not a very demonstrative man, but Mrs. Piper—she was a very lovely, charming old lady.

Q. In what way did Dr. Piper or Mrs. Piper refer to Mr. and Mrs. Hay? A. Son Edwin and daughter Florence. He called the smaller children his grandchildren.

Q. How did the children refer to them? A. Grandpa and Grandma Piper. They were made to defer to their wishes.

Q. When the two families were living in the Corcoran Street house, so far as you observed on the occasion of these visits, did or did not Mrs. Hay defer to the wishes and comfort of the Doctor? A. Yes; she did; she did so at all times. She was very particular to have even the blinds at a certain height. The Doctor was very particular about the light in the dining-room, and he had to have his lunch at twelve. Sometimes Mrs. Hay was out, but she would have their meals put on the table, so that they could lunch promptly at twelve, and very often she would send their meals to them; fix them on the tray herself, so that they would not have to wait, and their breakfast the same way; they never waited for Mr. and

Mrs. Hay. They had their breakfast promptly at eight o'clock. Sometimes, when Mr. and Mrs. Hay would come down, the Doctor would be finished his meal and gone upstairs.

Q. Did you ever hear the Doctor or his wife complain of any neglect? A. Never in the whole time.

Q. How about the heating of that house during the winter?

217 A. It was so hot that I could not stand it. I could not have lived in such an atmosphere.

Q. Heated by steam or hot air? A. Steam.

Q. How about the Doctor's apartments? A. Very warm; he had an extra stove in addition to the steam.

Q. Have you ever been in his rooms in the winter? A. Every time I went to see Mrs. Hay. I was very fond of both of them.

Q. Was it a disagreeably cold room? A. It was oppressively hot. I never liked to stay any longer than I could help in his rooms.

Q. Do you recall when Doctor and Mrs. Piper left the city for Saratoga? A. I do not, because I was ill at that time. I remember about the time, but I don't know exactly because I was confined to my room; but they called to bid me good-bye.

Q. You saw them? A. Oh, yes, sir. Mrs. Piper used to come there and talk with me. She had a sweet, affectionate, and loving disposition, and she often came over, and I remember that time when I was sick she came to say good-bye.

Q. She never came back? A. No, sir; she died at Saratoga.

Q. Has the Doctor ever returned? A. Not, as far as I know.

Q. Up to that time, did or did not the Doctor and Mrs. Piper ever express to you any change or feelings toward Mr. and Mrs. Hay from what they had expressed? A. No, sir.

218 Q. And their relations seemed to be the same? A. Yes, sir.

Q. How did the Doctor and Mrs. Piper seem in their home life? A. About as happy a family as you could find. It was just like one family. It was a delight to visit there.

Q. How frequently do you think you visited them? A. About once a week; sometimes two or three times.

Q. Were you ever there to meals? A. Sometimes I would go in the morning and stay all day. I have been just as intimate in that house as I would be in my own sister's house.

Q. Did Dr. and Mrs. Piper at any time dine at your house? A. Yes, sir; they were there at meals. The Doctor didn't like to take his meals away from his own house. He didn't care to come very often, but she was there frequently; once or twice to dinner.

Q. What seemed to be the mental characteristics of Dr. Piper during that period? Did his mind seem to be clear and strong or otherwise? A. His mind seemed to be strong. I always thought he was a very shrewd business man; a very careful business man.

Q. From what you saw of Dr. Piper, would you consider the matter of catering to his wishes and desires in the home to be an easy task? A. I would not have kept Dr. Piper in my house if he had paid me five thousand dollars a year. It was a very hard task,

indeed. Mrs. Piper was lovely, but the Doctor was very quick-tempered and sometimes very contrary. I remember, on one occasion, the Doctor got up to retire at eight o'clock. It was on Mrs. Piper's birthday and we had all been talking together. He
219 went upstairs and she did not accompany him. He kept calling her, and she said it was the one time she defied her husband. She stayed until ten o'clock, and he raged like a crazy man.

Q. And she didn't go? A. No; not until ten o'clock. That was the one time she ever defied her husband, she said, and I never saw her do so again. I remember we laughed over it considerably. He was a man of quick temper, very hard to suit, even in little things.

Q. Still you say his wishes were consulted and he was happy? A. He was perfectly so, as far as I could see. He stayed there. If he had been unhappy he would not have stayed. They were not compelled to stay.

Q. Did you hear Dr. Piper upon more than one occasion state that he was building the house for Edwin and Florence and that they were to have it at his death? A. Yes, sir.

Q. How frequently? A. I suppose I might say three or four times. I think that would be easily within the limit.

Q. These statements that he made to you, were they made voluntarily or otherwise? A. Why, I didn't ask him. I had nothing to do with that. They were voluntary statements, made in speaking of their living together and how they happened to be living here; particularly at the time of moving into the new house; that was particularly the time it was spoken of.

220 Cross-examination.

By Mr. LEIGHTON:

Q. Are you related to Mr. Hay or his wife in any way? A. No, sir; I am not related to either Mr. or Mrs. Hay.

Q. And you lived at this time on Pennsylvania avenue? A #1731 R street.

Q. At the time you knew Dr. Piper? A. I owned property at that time on Pennsylvania avenue.

Q. And you resided there? A. I did; No. 2501 at the time that I knew them.

Q. How frequently did you visit Mr. Hay or Doctor Piper during their first visit here? A. Oh, well, twice a month or three times a month.

Q. How long were they here? A. That I could not say.

Q. You don't know how many times you saw him during the first visit? A. Five or six times, perhaps.

Q. You don't know, do you? A. That would cover it. It was within that limit. It was no more, but certainly as many times as that.

Q. Do you know at that time whether they were visiting or boarding there? A. They were visiting. Mrs. Piper told me so.

Q. Did Dr. Piper tell you? A. I had no conversation with him on the subject.

Q. That was the first time you saw them? A. That was the first time, on their first visit to Washington.

Q. You say that Mrs. Hay objected to Doctor Piper and his wife coming there to live? A. At first I said; yes, sir.

221 Q. What was the ground of her objections? A. That the house was too small, and that she had a young baby that needed her care and attention, and she was afraid she would not be able to make the home comfortable for them.

Q. How did she manifest her objections, if she did so in your presence? A. Well, she spoke to me about their being very anxious to come and live with them; that they were old and their mode of life was different from that of herself and Mr. Hay, and she was afraid she could not make it comfortable for them, and that she had a young baby that needed her care.

Q. When did you first learn that they had decided to build a house? A. Through my husband. I don't remember the date.

Q. When did you first learn of it from Mr. Piper? A. When they all came to the house to speak about the plans.

Q. Mr. Hay with them? A. Mrs. Hay and Dr. Piper. I don't know about Mr. Hay.

Q. Do you know whether that was the first time that they had consulted your husband? A. No, sir.

Q. You don't know who introduced the Doctor to your husband, whether it was Mr. or Mrs. Hay? A. One of them; I don't know which.

Q. Your husband made the plans for the entire house? A. My husband and eldest son.

Q. You say that Mr. Hay paid for the mantels and the gas fixtures. How do you know that? A. I have seen the vouchers. They are at the office.

222 Q. That's all you know? A. I know I heard the contractor say so.

Q. You don't know of your own knowledge? A. I wasn't there when the money was paid.

Q. You don't know whether he has been reimbursed, if he had paid them? A. I don't know anything about Mr. Hay's private business.

Q. How frequently did you visit Dr. Piper after they moved in the new house? A. Every time I went there. My visits were to both Mrs. Hay and the Pipers.

Q. You don't care for the Doctor very much? A. I liked the old gentleman, but he was very disagreeable sometimes.

Q. Irascible? A. Very.

Q. Quick temper? A. Very.

Q. Did he ever manifest any of his ill-temper toward Mr. Hay? A. I never saw him.

Q. How frequently were you there? A. On an average of two or three times a week; sometimes more often than that.

Q. How do you know Mrs. Hay used to always send his meals up

to his room? A. I was not there every day. I have heard the servants say so. I have seen her when I was there.

Q. All you know of your own knowledge is about the days you were there? A. Of course, I couldn't see it when I wasn't there.

223 Q. Then all you wish to testify to is what you saw? A. I can testify that very frequently the meals were sent up; very frequently.

Q. Then you don't know only about the days you were there? A. Of course, but what I believe I can testify to. Of course, I can only swear to what I saw.

Q. You don't know whether Mrs. Hay continued her objections to Dr. Piper's residence there after they moved into the new house? A. She had no objection whatever after the matter was first brought up. She took them in as freely as she would her own mother and father, and did everything to make them comfortable and happy. It was only the idea of changing the old mode of life that caused her to object.

Q. The house, you say, was arranged so as to be convenient for the two families? A. Yes, sir.

Q. How many rooms does it contain? A. Fifteen or sixteen rooms and the attic. Dr. Piper had three or four rooms on the second floor and a room in the attic.

Q. The Doctor's apartments were separate from the balance of the house? A. On the other side of the hall; the hall was through the center. Their rooms were on the left-hand side as you went up the stairs, and he had three or four; I am not sure which.

Q. Those apartments were entirely separate from the rest of the house? A. Yes, sir.

224 Q. He was usually in his rooms? A. Oh, no, sir. He was downstairs very frequently, in the parlor or sitting-room.

Q. Was he agreeable when he was there? A. Perfectly so. I don't mean to infer that he was always disagreeable. I mean that he was peculiar in his ways. But he very often stayed downstairs. He was fond of hearing Mr. Hay sing, and seemed proud of him, but at eight or half past eight or nine he always retired. Sometimes Mrs. Piper would stay a little while longer; and he would take me to his room and show me his pictures. I think he was very fond of being downstairs.

Q. Did he at any time that you know interfere at all with the arrangements or routine of Mr. Hay's family? A. I never saw him.

Q. Stayed in his rooms except at these times you speak of, and at such times he was mostly pleasant? A. Yes, sir.

Q. You don't know upon what terms he went there to live? A. Certainly, I know nothing about their private business, except so far as I heard. I understood from what the Doctor said to me that the house was being built so that they could all live together; that it was for Edwin and Florence, and that they should have it at his death; and that made me believe that he was to live there as he

would with a daughter and son. That is what he gave me to understand.

Q. This house was arranged to suit the convenience of the then existing family, was it not? A. Yes, sir; and he always referred them to Mrs. Hay about any change. He said he wished her to be pleased.

Q. Did you at any time hear him address Mr. Hay as Son
225 Edwin? A. Very frequently.

Redirect examination.

By Mr. HOEHLING:

Q. These objections that have been referred to, on the part of Mrs. Hay, to the Pipers coming to their house and taking up their home with them, was that before or after the Pipers came to live in the P Street house? A. It was on the first visit. They visited here the first time, and then went away, and then came back for a second visit before they came to live at all. The idea was that when Mrs. Hay first knew that they wanted to come she objected to it because she had the care of her children and then the small baby I spoke of. The baby was named after Mrs. Piper, at her request. They were going to name it Elizabeth, and she wrote and asked that it be given her full name, Elizabeth Piper. That baby in the meantime had come into the family, so that was the objection to the plans. She also thought that it would change her home life entirely, and that the old people would require a great deal of care, and it would not be pleasant for either of them.

Q. These matters were all duly considered prior to the coming of the Pipers? A. Yes; the Pipers came, and after that I never heard it referred to at all, except as a very pleasant arrangement.

PACIFIC PEARL MULLETT.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY,
Examiner in Chancery.

Adjourned until Thursday, April 15th, at 3 o'clock.

226 THURSDAY, *April 16th*, 1897—3 o'clock p. m.

Met, pursuant to adjournment, to continue the taking of testimony on behalf of the complainant.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, counsel for the defendants; Mrs. Margaret Murray, examiner.

Whereupon THOMAS A. MULLETT, a witness produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name and place of residence, please. A. Thomas A. Mullett; # 1731 R street.

Q. And your occupation? A. Architect.

Q. How long have you been engaged in that business and with whom? A. Seven years, with my father, A. B. Mullett.

Q. He is now deceased? A. Yes, sir.

Q. Are you acquainted with Mr. Edwin B. Hay and his wife? A. Yes, sir.

Q. You know the defendant Richard U. Piper? A. Yes, sir; I have met him.

Q. When and where and under what circumstances did you first meet him? A. As far as I can remember, the first time I met Dr. Piper was in the office, #1411 F street, where, I think, Mr. and Mrs. Hay were also present. They talked over preparing plans
227 for a residence to be located on Corcoran street between 15th and 16th. I think this was about April, 1888.

Q. That was the first time you saw him? A. Yes, sir.

Q. When did you next see him? A. Doctor Piper and Mrs. Piper were at the office on several occasions during the preparation of the working plans of the house.

Q. Your father was the architect for that house, was he? A. Yes, sir.

Q. He prepared the plans? A. Yes, sir.

Q. Did you assist him in preparing those plans? A. No, sir; I had nothing to do with that.

Q. You were in the office? A. Yes, sir.

Q. Who was the builder of the house? A. Mr. Keenan.

Q. Do you know who selected Mr. Keenan as the builder? A. Mr. Hay.

Q. Did Mr. Hay and his wife, or either of them, call at your office during that period with reference to the matter of the prep-
228 aration of these plans? A. They did; yes, sir.

Q. Do you know whether or not they made any suggestions with reference to the plans? A. As near as I can remember, I think they did make a great many suggestions.

Q. Do you recall whether or not during that period Doctor Piper expressed any objection to suggestions made by them in the preparation of the plans? A. Not that I can remember.

Q. How was the house, for which you were then making plans, to be arranged? A. The second floor was to be arranged so that the Doctor and Mrs. Piper had rooms situated on the west side of the house—house fronting north. They were arranged so that their apartments were not connected with the part of the house occupied by the Hay family, and, if I remember correctly, there was a bath-room also in connection with the apartments.

Q. With whose apartments? A. Dr. Piper's.

Q. That is, a separate bath-room? A. Yes, sir; if I remember correctly. I haven't seen the drawings since about eight years ago.

Q. What was the style of the house? A. It was a double house.

Q. Do you recall how many rooms it had? A. I could not tell you that without referring to the plans.

Q. Was the size of the house sufficient to accom-odate two fam-

ilies composed of the number of people that were in Mr. Hay's family and Doctor Piper's? A. Yes, sir.

229 Q. Do you know what the cost of that house was, outside of the ground?

Mr. LEIGHTON: Objected to as immaterial.

A. As near as I can remember, the house cost a little over $13,000. I could give the exact figures by referring to the ledger in the office.

Q. Did you ever go into the house after it was completed? A. Yes, sir; on one or two occasions.

Q. On these occasions were Dr. Piper and his wife and Mr. Hay and his family living in the house? A. Yes, sir; I have been in Dr. Piper's rooms and stayed there quite a while one evening.

Q. Was Dr. Piper occupying the suite of rooms that had been arranged for him? A. He was; yes, sir.

Q. And was the house fitted up well after they moved in it? A. Very nicely.

Q. Was it nicely furnished? A. Yes, sir.

Q. How was the house heated? A. By steam or hot water. I don't remember exactly.

Q. Were you ever there in the winter time? A. Yes, sir.

Q. Did you observe whether or not the house was cold or otherwise? A. I recall on this occasion that I went to Doctor Piper's rooms, and they were so warm it was very uncomfortable to me.

Q. Was the rest of the house cold? A. No, sir.

230 Q. What seemed to be the relations existing between Doctor Piper and his wife and Mr. Hay and his family? A. As far as I could see, the little I went to the house and during the transaction of business at the office, they seemed to be very pleasant.

Q. Did you ever see Mrs. Hay in company with Doctor Piper and his wife? A. Not that I remember now except that it was at the office there.

Q. What seemed to be the relations existing between them on these occasions? A. Very pleasant.

Q. Did you ever witness any unkind treatment by Mrs. Hay to the Pipers on these occasions? A. No, sir.

Q. What kind of a man was Doctor Piper? A. Well, he impressed me as a very pleasant old gentleman.

Q. What seemed to be his condition of mind? A. As far as I could judge, he seemed to be all right.

Q. Did he seem to be a man of a weak nature or otherwise? A. No, sir; I didn't judge him that way.

Q. When was the last time you visited that household, as near as you can recollect? A. I judge it was some time the latter part of 1888 or the first part of 1889; somewhere around that.

Q. That was the last time? A. Yes, sir; that I have been in the house while he was there.

231 Q. While he was there? Q. A. Yes; about that time.

Cross-examination.

By Mr LEIGHTON:

Q. How old are you, Mr. Mullett? A. I am in my twenty-ninth year, sir.

Q. At the time these plans were drawn you were about twenty? A. Yes, sir.

Q. What were your duties in the office? A. Well, you might say I was confidential clerk.

Q. What were your duties? A. My duties were to attend to all the correspondence, keep the books, press-copy all the letters, and attend to the general routine of the office.

Q. Your father was conducting a large business? A. Yes, sir; he was.

Q. Numerous contracts going on at the same time as this one? A. Yes, sir.

Q. You were not occupied in the office as a draftsman or connected with the preparation of plans in any way? A. About that time I was doing a little drawing. My father took me in there with the idea of making an architect of me.

Q. You didn't do any work on this especial house? A. Not that I can state here.

Q. How, then, did you become interested in the visits of Mr. Hay and Mrs. Hay and Doctor Piper and his wife any more than in other visitors? You had no interest in them, had you?

232 A. Except that sometimes when the conversation was going on and I had gone into the back room. Very often I stopped my work and went in there to see what was going on.

Q. As a matter of curiosity? A. As a matter of curiosity and a matter of interest, as I was learning the profession then.

Q. You say you didn't call at the house after it was completed but twice, as I understood you? A. As near as I can remember. I may have been there more than that.

Q. When was the first time you called? A. I could not tell that.

Q. And the last time was in 1889? A. About that, as near as I can remember.

Q. You saw Dr. Piper the last time you were there? A. No, sir.

Q. Was he the first time? A. Yes, sir; I saw him then.

Q. In his room? A. Well, I couldn't say.

Q. You recall whether his rooms were heated by a stove in addition to the heating apparatus? A. I couldn't state that now.

Q. What time was it when you called? A. If I remember correctly, in the fall.

Q. What time in the fall? A. I couldn't state the time.

Q. Was it cold weather or not? A. It was fairly cold outside, I remember, at the time.

Q. Do you charge your memory with details of this kind

233 ordinarily? A. Except that on this occasion I went to see the Doctor, and, as I stated, up in his rooms it was extremely warm to me, but I never liked a room myself any warmer than

sixty-two or sixty-five. If it is over that, it is very warm, overheated, to me.

Q. At the other visit you don't recall anything about the heat? A. No, sir; I remember this visit clearly, because the Doctor and I had quite a chat about photography. I was interested then in amateur photography, and that is the reason I remember this visit so plainly.

Q. Your mother, I believe, is Pearl Pacific Mullett, who has already testified? A. Yes, sir; she is my mother.

Q. You talked over this case with her, I suppose? A. No; not that I remember of.

Q. You have with Mr. Hay? A. Simply Mr. Hay came to me and asked me to come and testify for him, and asked me whether I remembered the gas fixtures and the heating apparatus being paid for by him—that is, by Mr. Hay. That is all the conversation I have had with Mr. Hay in regard to the case.

Q. You say that Mr. Hay suggested the builder. How do you know that? A. Well, because Mr. Keenan, the builder, was not a man that was bid-ing in the office at the time, and my father objected to him. He didn't think that Mr. Keenan was competent to build the house in accordance with the plans and specifications.

Q. How did you infer from that that Mr. Hay selected him?
234 A. Because Mr. Hay presented Mr. Keenan to the office.

Q. Introduced him there? A. Yes, sir.

Q. Whether it was at the suggestion of Dr. Piper or Mr. Hay, you do not know? A. Mr. Keenan was a friend of Mr. Hay's.

Q. The contract was made by Doctor Piper with the builder? A. As near as I can remember. I have a copy of it.

Q. Mr. Hay was not connected with the matter, except simply to introduce the builder; is that it? A. I don't know anything about that part of it. I know Mr. Hay brought him to the office.

Q. And that is what you mean when you say he selected him? A. Yes, sir.

Redirect examination.

By Mr. HOEHLING:

Q. Do you know whether or not your father communicated his objections with respect to Mr. Keenan? A. To whom do you mean?

Q. To Doctor Piper or to Mr. Hay. A. No, sir; I don't think he did. He might have said something to Mr. Hay with regard to Mr. Keenan's ability as a builder; but he was satisfactory to the parties concerned at the time, and nothing more was said about it.

Q. And Mr. Keenan was the builder? A. Yes, sir.

Q. Who put the heating apparatus in that house? A. It was put in by Messrs. N. L. Chappelle & Company. Mr. Kemon
235 was the company.

Q. Do you know who paid for the putting in of that heating apparatus? A. As near as I can remember, I think Mr. Hay; I think the plans called for furnace heat.

Q. What was put in? A. Steam heat or hot water; I don't remember, but I think it was steam heat.

Q. Do you know the amount that was paid for the heating apparatus? A. I couldn't tell from memory.

Recross.

Mr. LEIGHTON:

Q. Why do you suppose that Mr. Hay paid for the heating apparatus because of the change made in the manner of heating the house? A. I think at that time, as near as my memory serves me, that the cost of the house was a little more than the parties concerned wanted to give——

Q. Do you, of your own knowledge, know that Mr. Hay paid for it? A. I can tell by referring to the books at the office.

Q. Do you know of your own knowledge? Did you disburse the money? A. No money passed through my hands or through the office.

Q. Whether it was paid by Dr. Piper direct to the parties who did the work? A. As near as I can remember——

236 Q. You don't know? A. I can tell by referring to the books.

Q. How can you tell by that? A. By reference to the contracts with the parties.

Q. This was an afterthought, I understand. That's what you said? A. I didn't mean an afterthought. Probably I misunderstand you.

Q. The plans and specifications, I understand, called for furnace heat? A. As near as I can remember; yes, sir.

Q. And afterwards, at the suggestions of Mr. Hay, it was changed to steam? A. Yes, sir, and I think Mr. Hay paid the difference himself.

Q. You don't know anything about it of your own knowledge? A. I can't swear to it of my own knowledge.

Q. You don't know of your own knowledge anything about it? A. I have a slight impression that it was paid by Mr. Hay.

Q. The money didn't pass through your hands? A. Only the contracts passed through our hands through the office.

Q. The money didn't? A. We certified to all the money paid.

Q. You don't know who paid the bills? A. We do when the contract is in the owner's name.

Q. The contract in this case was made in the owner's name? A. Mr. Keenan's contract was.

Q. You don't know whether the contract with the steam-

237 fitter was in Dr. Piper's name or Mr. Hay's? A. I cannot swear to it from memory, but I can produce the books from the office.

Q. How would that show who, unless the money passed through your hands? A. In Doctor Piper's contract with Mr. Keenan, the contract for the building, there was enumerated every item of work that was necessary for completing that building. There was no

mention of any heating of any kind, and so Mr. Keenan would not be compelled or called upon to put it in.

Q. Unless he made a subsequent contract? A. Yes, sir.

Q. And he could do that without the architect as well as with him? A. Yes, sir.

Q. How would you know who paid for it? A. If in that case the work was paid for by Mr. Hay, the contract with the heatingman would be made out in Mr. Hay's name.

Q. And from that he would infer that he would pay for it? A. He would pay for it; yes, sir.

Q. You would not know whether Doctor Piper gave Mr. Hay the money? A. No, sir.

Q. Or whether Mr. Hay had been reimbursed since? A. No, sir; we would give a certificate to the heatingman certifying to Mr. Hay or to Mr. Piper or whoever it was, and that was all we would do.

Q. You didn't disburse the money and you don't know
238 anything about it? A. No, sir.

THOMAS A. MULLETT.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Whereupon Col. WILLIAM E. MCLEAN, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

Mr. HOEHLING:

Q. State your name and place of residence. A. My name is William E. McLean. I regard myself as a citizen of Terre Haute, Indiana. I moved to this city and purchased a house at No. 1628 15th St. northwest, where I resided from some time in 1886 until 1890, I think.

Q. You were at one time, I believe, deputy commissioner of pensions? A. I came to Washington city on the last day of March, 1885, to assume the office of deputy commissioner of pensions.

Q. And that office you retained until when? A. The 30th of June, 1889, having held it during Mr. Cleveland's entire administration and some two or three months in Mr. Harrison's.

Q. You are acquainted, I believe, with Mr. Edwin B. Hay and his wife? A. I am.

239 Q. How long have you known them? A. I have known of the family practically all my life. Mrs. Hay is a very distant relative of mine; her mother was a niece of my grandmother, who raised me. I never met Mrs. Hay, though, until I came to Washington.

Q. That was in 1885? A. Yes, sir. I met Mr. and Mrs. Hay within a week or so after I came to Washington. A short while after that I bought this house, and still own it. I bought it in 1886.

Q. When you say you first met Mrs. Hay in 1885, did you also

at that time first meet Mr. Hay? A. Yes; I met them both within a few weeks after my arrival. They were then living on P street near the corner of 15th street.

Q. At that time where did you live? A. I was boarding at that time on New York avenue.

Q. Did you subsequently live near the Hays, on P street? A. Not until I moved into my own house.

Q. Are you acquainted with Dr. Piper, who is one of the defendants in this case? A. I know Doctor Piper and his wife, having met them both upon two or three occasions, I guess, at the residence of Mr. Hay on P street. The first time must have been in the spring of 1886.

Q. Do you remember whether at that time there was a house being built on Corcoran street in which the Doctor and Mr. Hay were interested? A. I think that house was commenced some time in the fall of 1886. That is my recollection about it.

Q. Did you meet the Doctor and his wife subsequent to
240 the time you first met them? A. Oh, yes; I met them several times at the P Street house.

Q. Were Doctor and Mrs. Piper living with Mr. Hay on P street? A. I think so; yes, sir; they were living together.

Q. Now, when you saw them together at this P Street house, what seemed to be the relations between Mr. Hay and his wife and Doctor Piper and his wife? A. Of course, I did not make any special inquiry. They appeared to be exceedingly friendly and the most pleasant relations.

Q. Did you see that Corcoran Street house from time to time as it was in course of erection? A. Yes, sir; I did see the house, because it was within a pistol shot of my own house. I saw Doctor Piper in front of it several times and talked with him about the house.

Q. You talked with him about it? A. Yes, sir.

Q. I wish you would please state the substance of the conversation. A. I can't remember the exact language of any conversation, and I don't pretend to remember the exact language of any conversation with Doctor Piper. I remember once—and I think this conversation, to the best of my recollection, was in front of the house—I made some reference to it being such a large house—a double house—and he said that it was none too big; that Edwin and Florence had several children, and that he and his wife were going to reside there; that the house was built for all of them, as I understood.

241 Q. That is about the substance of the conversation? A. Oh, I had repeated conversations with him. We used to talk about the West a great deal. He had spent quite a while out West, and we had several conversations not nearing upon the subject-matter of this controversy at all.

Q. Simply general conversations? A. Yes, sir.

Q. What kind of a man was Doctor Piper? A. At the time I met him he impressed me as an exceedingly pleasant old gentleman. Indeed, I was very favorably impressed with both he and

his wife. His wife appeared to be very pleasant and affable; rather delicate and frail in appearance, and the old gentleman himself had some indication of physical frailty, but very pleasant and very gentlemanly, as far as I could see.

Q. His mind seemed to be clear? A. At that time it was, as far as I could observe.

Q. Did you have occasion to visit the family after they moved into the Corcoran Street house? A. Repeatedly.

Q. Did you ever take meals with the family? A. Very frequently, indeed, at the new house.

Q. Did you ever spend any evenings there in their company? A. Yes.

Q. And you observed their home life? A. Yes, sir; they appeared to live very happily and pleasantly together, as far as I knew or could see. My wife was there only once. She was a confirmed invalid of the worst type, and died in this city in October, 1889. I have no children, and consequently was around a good deal.

242 Q. And spent a good deal of your time at the Hay home? A. Not a good deal of my time, but I was there quite frequently; visited there with perfect freedom.

Q. Did you on any of these visits go up into the rooms of Doctor Piper? A. I can't recall I was ever there but once on his invitation about something. I have been trying to recall what the object was, but I cannot. I think I was in his private room once, and once only, he and his wife being there at the time.

Q. Well, I suppose you saw the various rooms in that house? A. I have never been in the third story. I believe Doctor Piper's rooms were on the second story, were they not?

Q. Such rooms as you saw, including Mr. Piper's rooms, were they comfortably fitted up? A. Very comfortably fitted up.

Q. Did they seem to live well at the home? A. Very. Enough for all practical purposes in every way, as far as I could see; lived better than I did, I know.

Q. Did they all seem to be happy, or otherwise? A. Entirely so.

Q. In what way did Doctor Piper and his wife refer to either Mr. Hay or his wife? A. I can't recall that I ever heard Mr. Piper speak of Edwin any way except "Edwin," and he knowing my relationship with Mrs. Hay (I don't know whether that prompted it or not). I remember once he spoke of her as "my daughter Florence." I think that was while they were staying at the new house.

Q. From what you observed upon your several visits to the house, did or did not Doctor Piper and his wife seem to
243 be treated with consideration? A. As far as I know, they did.

Q. At any time when you were present did the children of Mr. Hay or any of them show disrespect of Doctor Piper and his wife? A. Never, under my observation. The children are exceedingly pleasant children, as far as I saw.

Q. Are they well-behaved children? A. Very well behaved, indeed.

Q. Do you recall when Doctor Piper went away from this city with his wife the last time? A. I do not.

Q. It has been some few years ago. A. The terrible illness of my wife, which was very protracted, and her subsequent death, in 1889, at that house caused me to take less interest than I otherwise would have done.

Q. When you say "that house" you mean your own house? A. Yes, sir.

Q. You haven't seen Doctor Piper since then? A. I haven't seen him since I returned to Indiana. I returned to Indiana in 1890, I think in the fall of 1890, where I have remained continuously until in the last few months.

Q. And since that time you have not seen either Doctor Piper or his wife? A. No, sir; neither of them.

Cross-examination.

Mr. LEIGHTON:

Q. During the progress of the building of the Corcoran Street house you say you saw Doctor Piper frequently there. Was
244 he inspecting the building or watching the progress of the house? A. Just simply watching it as an interested owner; don't know that he was directing it in any way.

Q. And from conversations with you at that time and from the size of the house you gathered that he was building it to accommodate the two families? A. Mr. Hay and himself.

Q. It was arranged in such a way as to suit the convenience of the members of the two families at that time? A. Yes, sir.

Q. Did Mr. Hay have anybody with him except the members of his own family? A. Occasionally Mrs. Brown, his wife's mother, would be there. Occasionally Mr. Brown, her father, would be there. I met them both there occasionally, and also Mrs. Evans, Mrs. Hay's sister.

Q. Nobody habitually staying there? A. I think not, during the time that Mr. and Mrs. Piper were there, that I know of, although the visits of Mr. and Mrs. Brown may have been protracted, more or less.

Q. Are you able to fix with any definiteness how frequently you made your visits to Mr. Hay's house? A. I should say possibly once a month; maybe even oftener. There may have been two or three months that I didn't go there, owing to the illness of my wife.

Q. At such times as you dined there was it on his invitation or was it always on the invitation of Mr. and Mrs. Hay? A. The Hays. I don't know that I was ever invited by the Doctor or his wife.

245 Q. Was it the habit, when you were there, of Doctor Piper and his wife remaining with the family or retiring to their rooms after dinner? A. Well, I cannot recall. Sometimes I went up in Mrs. Hay's room, Edwin and his wife's sitting-room, on the second floor. I have frequently been there.

Q. Their part of the house was entirely separate from the Doctor's

rooms? A. It is a double house, an old-fashioned double house; best kind in the world, I think. It had a hall through the center and rooms on either side. Mr. and Mrs. Hay had apartments on the left-hand side as you go up, the east side, and Mr. Piper and his wife occupied quarters on the west side.

Q. You don't know anything about who furnished Doctor Piper's rooms? A. I don't. I don't pretend to know anything about it.

Q. You don't pretend to know anything about the arrangements concerning their living together? A. Of course, I don't know whether he was there in the capacity of a boarder or not, but I assumed from the conversation that Mr. and Mrs. Hay furnished the table.

Q. What sort of a person is Mrs. Hay as to her being quick-tempered, irascible, or otherwise? A. I never saw any exhibition of irascible outbreaks from her in my life. Her mother, Mrs. Brown, is certainly one of the sweetest-tempered women I have ever known. I had known her when I was a little boy, having been born in Frederick, Maryland, and her father having been my guardian.

Q. You say you never saw any exhibition of irascibility?
246 A. Never upon the part of Florence. If she was of an irascible disposition, she had a very fine faculty for concealing it. I never saw any outbreaks of anger upon her part.

Q. Did Mrs. Hay, in conversation with you, ever express herself as dissatisfied with having Doctor Piper and his wife living there in that way? A. Never to me during their stay there.

Q. Did she afterwards or not? A. Only recently—only since the commencement of these proceedings—has she ever alluded to the fact that they were *personæ non grata*.

Q. And she was glad to get rid of them? A. Since the commencement of these proceedings she has told me that they gave her a great deal of trouble.

Q. Troublesome guests and she was glad that they had gone? A. I don't want to put it that strong, that she was glad that they were gone, but that they gave her a deal of trouble.

Q. She didn't say whether or not she gave them any trouble? A. No, sir.

WM. C. McLEAN.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET M. MURRAY, *Examiner.*

247 MONDAY, *April 19th*, 1897—3.30 o'clock p. m.

Met pursuant to agreement to continue the examination of witnesses on behalf of the complainant.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, Esq., counsel for the defendant-; Mrs. Margaret Murray, examiner.

Whereupon Doctor G. WYTHE COOK, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name and place of residence. A. G. Wythe Cook, #3 Thomas circle.

Q. And your profession. A. Physician.

Q. You are practicing in this city, are you not? A. Yes, sir.

Q. How long have you been practicing here? A. Eighteen or nineteen years.

Q. Are you acquainted with Edwin B. Hay and his wife? A. Very well.

Q. How long have you known them? A. For a good many years; probably ten years or more.

Q. Are you acquainted with Richard U. Piper, who used to live in this city? A. Yes; I knew him very well; he used to live at Mr. Hay's.

Q. I wish you would please state about when it was that you first met him, and where and under what circumstances you met
248 him. A. It must have been in the latter part of the '80's; I cannot say definitely; I met him at Mr. Hay's house on P street; I was visiting one of the children professionally when I met the Doctor.

Q. Was Mrs. Piper with him then? A. I don't know; I didn't see her the first time.

Q. You subsequently met her there? A. I haven't a distinct recollection as to whether I met Mrs. Piper on P street or not; I remember meeting the Doctor there.

Q. And you subsequently did meet Mrs. Piper on Corcoran street? A. Very often; I knew her well.

Q. Were you a frequent caller at Mr. Hay's house on P street? A. Well, when there was sickness; not very often socially, because I don't make many social visits.

Q. You were the attending physician to Mr. Hay's family? A. Yes, sir.

Q. Did you attend Doctor Piper at that house at all? A. I think not.

Q. I believe I understood you to say that you subsequently met Mrs. Piper and knew her well, in the Corcoran Street house? A. Yes, sir.

Q. Did you call at the Corcoran Street house in a professional capacity? A. Mostly.

Q. Did you ever call there socially? A. Oh, yes; I have
249 called on Mr. and Mrs. Hay and on the Doctor and Mrs. Piper also.

Q. Did you become quite well acquainted with both Doctor and Mrs. Piper? Very well.

Q. What seemed to be the relations existing between Mr. and Mrs. Hay and Doctor Piper and his wife after they moved in the

Corcoran Street house? A. They seemed to be of the most intimate character.

Q. In what way did you ever hear the Doctor refer to Mr. Hay, addressing him? A. Doctor and Mrs. Piper often spoke of them as their children; that was the common way for them to refer to them.

Q. And in what way did they refer to the children of Mr. and Mrs. Hay? A. Well, as their grandchildren. The children called them grandma and grandpa, and they seemed to be quite devoted to the old people, these little children did.

Q. And did the old people seem to return that devotion? A. Very affectionate. The old Doctor took great interest in Ned, a little fellow, and instructed him, giving him his lessons and teaching him mathematics, and seemed to be especially fond of him, not that I mean to say that he was not as fond of the other children.

Q. But he was especially attached to this Ned? A. Seemed so to me.

Q. Did you ever hear Doctor or Mrs. Piper make any statement with reference to having adopted the Hays? A. Yes, sir; I heard Doctor and Mrs. Piper both say that they were their children, and that they were to have their property. What that consisted of I didn't know. I knew nothing about their possessions except from
250 common statements that this house on Corcoran street belonged to Doctor Piper.

Q. You understood that to be a fact? A. Yes.

Q. Did the Doctor or Mrs. Piper ever make any statement to you as to the circumstances of his meeting with Mr. Hay and making his home with them? A. He did tell me that he met him in a case in which they were both expert witnesses; told me about that and how pleased he was with Mr. Hay, and how he became attached to him; how he came to Washington and made them a visit, and how they had agreed to live together; never went into any particulars about it, but just a statement to that effect.

Q. How was the home on Corcoran street kept? Was it a comfortably kept house or otherwise? A. Oh, nice and well kept—comfortable in all its parts.

Q. Seemed to be nicely fitted up? A. Very nicely furnished; very pleasant home.

Q. Did Doctor and Mrs. Piper seem to be comfortably taken care of at the home? A. It would seem so; it was a very nice, comfortable establishment all around.

Q. Did the Doctor seem to be happy and contented in their home life? A. Seemed so to me. I never thought anything to the contrary.

Q. Did you ever visit Doctor Piper in his rooms in that house? A. Yes; both professionally and socially. He usually saw me in his rooms.

Q. Did you ever have occasion to visit him in his rooms
251 during the winter season? A. Frequently.

Q. Did you ever take notice as to the temperature of Doctor Piper's rooms on any of your visits? A. I thought the Doctor was somewhat of a salamander; he kept his rooms pretty

warm; too warm for me, and I would have to go out sometimes to get a little air. It was way up in the seventies—seventy-five sometimes. Perhaps I felt it more, as I was out of doors a great deal.

Q. What kind of a man was Doctor Piper as to his mental temper-ment? A. The Doctor was a man of considerable attainments and ability, a man of positive opinions.

Q. Seem to be a positive man or otherwise? A. Yes, sir; he had his opinions; a kind-hearted, good man, though, in my opinion. I always found him so.

Q. From what you observed upon these different visits that you made at the house, did or did not the Hays seem to consult the desires, wishes, and comfort of Doctor Piper and his wife with respect to matters around the house? A. I think they were first; they were always consulted.

Q. Were you ever there when the meals were sent up to the Doctor's rooms? A. Yes, sir; I have seen the meals sent to his room.

Q. Did you ever witness any disrespect shown by the children of Mr. Hay to Doctor Piper or his wife? A. No; I never did. My judgment of conditions was that everything was harmonious—that is, to the best of my knowledge, of course, I didn't see anything that would indicate any jar of any kind while I was there.

Q. From what you observed, did the relations betwe-n
252 Mrs. Hay and the Pipers seem to be affectionate and kindly or otherwise? A. It seemed that they were all on good terms, best terms. I didn't see anything that would cause any disturbance; that might have occurred at other times, but I never saw anything.

Q. Did these visits, either professional or social, continue from time to time up to the date when Doctor Piper left the city? A. Yes; until he finally left here. I think he has not been here since the summer following which his wife died.

Q. Since that time you haven't seen him. A. No; I have not seen him; frequently inquired of Mr. Hay what news he had of the old Doctor, but never met him. I inquired because my relations with the old Doctor were very friendly. He had taken quite an interest in me. He was quite a miscroscopist and he wanted me to become an expert, and he offered to instruct me, which I took as an evidence of his kindly feeling, and he invited me to his rooms in order that he might talk about this subject.

Q. And you did go to his rooms? A. Yes; I did. This occasion that I speak of the room being quite warm was one of my visits when he had invited me.

Cross-examination.

Mr. LEIGHTON:

Q. How frequently did you visit Doctor Piper during his residence in the Corcoran Street house? A. Well, I could not say as to how frequently—several times. The Doctor himself was subject to
attacks of indigestion, and I used to visit him then pro-
253 fessionally, with a view to relieving him, and he wanted me to come. I visited him then as often as twice a day; then

sometimes only twice a week I would see him, or perhaps a month or three weeks would go by without my seeing him, but I did visit him very frequently.

Q. Did he ever while you knew him have a spell of sickness that confined him to his bed? A. He wasn't confined to his bed very much, but to his room.

Q. The result of indigestion? A. Yes, sir.

Q. It was a sort of stomach trouble? A. Yes.

Q. Required him to be careful about the time when he took his food and the character of it? A. It was necessary that he should be careful in that respect, and I think he told me that he exercised great care as to what he would eat and would always ask my advice about it, and I gave him such general directions as I thought, with his judgment, he would be able to understand.

Q. Isn't it necessary that persons afflicted with stomach trouble that they have their food at regular periods? A. Certainly.

Q. When did the Doctor first make the statement to you that Mr. Hay was to have the property? A. I can't recall the time.

Q. You recollect how the conversation arose? A. I cannot. There was no reason for me to fix that in my mind. I heard them time and again referred to as his children, and Mrs. Piper
254 would make a declaration to that effect and the Doctor would confirm it, or the Doctor would say something and Mrs. Piper would confirm it, but as to the definite time I cannot say. The impression, though, was made indelibly upon my mind, because I heard him refer to them as his children and speak of his property in this way so often.

Q. You say the relation and regard of the Doctor and his wife was that of strong affection for the Hay family? A. That was my impression.

Q. And you suppose this proposition to give him the property grew out of that regard? A. Probably so; yes.

Q. You don't know anything about the conditions upon which they were living together or upon what terms they lived, as to whether they had any contract or not? A. No; not from what I heard the Doctor say. I might say as to what I heard from Mr. Hay.

Q. Well, what Mr. Hay said would not be binding on the Doctor. A. No; I suppose not.

Q. The Doctor never told you of any terms? A. The remarks that he made were in a general way.

Q. You say that Mrs. Hay, from what you saw, always consulted the wishes of Doctor Piper. Can you give an instances or the circumstances which leave that impression upon your mind? A. Now, I will have to say what Mrs. Hay told me about that. She would say, "I have prepared the Doctor's food thus and so, because he is extremely particular," and she stated to me that he
255 must have it at a definite time, and as he must have his meals when it didn't suit the rest of the household she had sent them to his room.

Q. Did Mrs. Hay ever manifest to you or in your presence any

annoyance at the Doctor's being there or the relations that existed between them? A. No.

Q. As though he was a burden to her? A. No; I think not.

Q. With reference to the temper-ment, is Mrs. Hay a high-strung woman or a woman easy to get along with in a relation of this sort? A. Well, my judgment of Mrs. Hay is from seeing her in the sick-room and seeing her continually about the house; never saw any occasion when there would be anything to develope any amount of temper. There was no occasion that I recall. I never saw her manifest any considerable amount of high spirit—that is, of antagonism. I never saw her under such circumstances.

Q. Your profession enables you to constantly judge of the character of people, both mental and physical. What would you say in respect of that; is she a person of high temper? A. I would not judge so.

Q. When was the last time you visited the Pipers—how long before their departure? A. Well, I think I have no means to fix the date definitely; it was some time in the summer, prior to the death of Mrs. Piper. I don't know just when I visited the Doctor and Mrs. Piper in a professional capacity, and I don't think I kept any memorandum of the visits that I made to the Doctor, as those
256 visits were all of a courteous nature, such as is extended from one physician to another, for which I received no compensation and for which I never rendered a bill. For that reason I took no account of the visits, though I may have some memorandum somewhere which would indicate that I had to make a visit there, as I keep a list of that sort, but as to the definite time, I cannot state that.

G. WYTHE COOK.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

257 Whereupon W. T. KEENAN, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name and place of residence. A. W. T. Keenan, # 924 19th street N. W., this city.

Q. And your occupation? A. Carpenter and stairbuilder.

Q. Where is your office? A. 1920 K street.

Q. How long have you been engaged in that business? A. Nearly twenty-five years; since 1872.

Q. In this city? A. Yes, sir.

Q. You are acquainted with Mr. Edwin B. Hay and his wife? A. Yes, sir.

Q. How long have you known them? A. About ten years.

Q. Were you at any time acquainted with Doctor Piper and his wife? A. Yes, sir.

Q. What were the circumstances under which you met Doctor Piper first? A. I estimated for a building, at Mr. Mullett's office, to be built for Doctor Piper.

Q. What kind of a building? A. A dwelling-house.

Q. Is that the Corcoran Street house? A. Yes, sir; now, I think, occupied by Mr. Hay.

258 Q. Do you remember about when that was? A. I think I made a contract in July, 1887.

Q. You made the contract with whom? A. The contract was drawn up in Mr. Mullett's office.

Q. Mr. Mullett being the architect? A. He was the architect and I was given to understand that Mr. Hay was the attorney for the owner.

Q. Prior to entering into the contract for the building of the house, did you submit an estimate of the cost? A. Yes, sir.

Q. To Mr. Mullett? A. Yes, sir; I am not sure whether the contract was made to Mr. Hay, to Mr. Mullett, or to Doctor Piper.

Q. At any rate, you submitted a proposition to one of them? A. Yes, sir.

Q. Was that based upon plans and specifications that you had received from Mr. Mullett? A. Yes, sir.

Q. And afterwards it was accepted? A. He cut the expenses considerable. They wanted considerable taken off, and I went to the office and did take off quite a large amount, and the work was awarded to me.

Q. About when did you start the building of that house? A. I think in the latter part of July or in August.

Q. And about how long did it take before the house was finally turned over? A. It was nearly twelve months before I finished. I refused to go on after December unless they would be responsible for the freezing, so they stopped me in December, and I did nothing more until the latter part of March or April. I refused to continue the work until after the 17th of March.

259 A. After the 17th of March, you resumed work? Q. Yes, sir.

A. And kept it up until the house was completed? A. Yes, sir.

Q. Did you spend much of your time at the house when it was in course of erection? A. I was there nearly every day; sometimes I stayed there all day. I had a nephew just learning the business and I had him in charge, but I was there every day.

Q. And while there you gave your personal attention to it? A. Yes, sir.

Q. During the building of the house, and while you were there, did Doctor Piper from time to time come to the house? A. Yes, sir.

Q. Mrs. Piper with him? A. Yes, sir.

Q. And did Mr. and Mrs. Hay come over from time to time? A. Yes, sir.

Q. Were there any changes made in the house as the building was going on? A. A great many changes made from the original

plans. The windows put in the basement were not on the original plans. Some windows that were put in the parlor were taken out after it had been bricked up and plastered, at the suggestion of Mrs. Hay, as she said there were too many windows, and no place to hang pictures.

Q. At her suggestion the change was made? A. Yes, sir.

Q. Were any changes made at the suggestion of Doctor Piper or his wife, that you recall? A. Only one change. There was a very heavy finals put on where the bay window joined at the top of the roof. It was quite large and looked like an ostrich, and he
260 objected to that, as he said it looked like he was crawling over on his neighbors. I told him that it set the building off, but he said he didn't care, he didn't like it, so they were taken off, but as I had paid ten dollars to have them painted, I charged him ten dollars to cover that.

Q. At whose suggestion were the other changes made, so far as you remember? A. Mrs. Hay asked for the changes in the windows. If there were to be any changes they were submitted to Mr. Mullett, and I was credited with any additional work and for anything that was changed.

Q. Under whose immediate orders were you as builder? A. I was subject to Mr. Mullett's orders.

Q. Did you at any time receive any instruction from Mr. Mullett or from Doctor Piper as to modifications or changes in building, and who had the right to make changes or to give orders? A. If the changes were suggested to any one, of course they were always suggested to Mr. Mullett, and when he was rather oppressive with me I always appealed to Mr. Hay. There were some changes made in the dormer windows, and I submitted an estimate for the change, and after they were finished he didn't like it.

Q. Who didn't like it? A. Mr. Mullett. He insisted upon taking them out, and he threatened to take a hatchet and cutting them out, and I appealed to Mr. Hay and asked him if he was satisfied with them, and he said it was all right——

Q. Did Mr. Hay adjust the matter? A. He said they were all right and Doctor Piper said they were all right, and they remained.

261 Q. Did you have any conversation with Doctor Piper when he would be there at the building? A. On several occasions.

Q. Would he come, as a rule, alone or would his wife and Mr. Hay accompany him? A. Generally with his wife, with Mr. Hay sometimes.

Q. What seemed, as far as you observed, to be the relations between himself and Mr. Hay? A. Very intimate.

Q. In what way did he refer to Mr. Hay? A. He would always speak about him as Son Ed., I think.

Q. Did he ever make any statement to you as to why he was building this house? A. He said he was building the house as a residence for himself during his lifetime; that he had adopted Mr. Ed. Hay and his wife as his children, and that at his death this

property would go to them. He told me that on more than one occasion. I asked no questions, as I knew nothing about it, and he always volunteered the information.

Q. On more than one occasion? A. Yes, sir; that he was doing that for his children. I thought at first it was Mr. Hay's children, until he told me it was Mr. Hay and his wife.

Q. Was that before the house was started or during the progress of the work? A. During the building of the house. Of course, I had to have all the floors laid, and probably the stairways, so that he could go all around over the house, and he was there with his wife probably two or three times a week. He would ride around on his tricycle and his wife would walk.

Q. Did these visits of Doctor Piper continue from time to
262 time until the house was finished? A. Yes, sir.

Q. Did you see anything of him after the completion of the house? A. Probably for two or three weeks before they made the settlement, but never on the street.

Q. Up until the last time you had any conversation or talk with Dr. Piper had he or not expressed any change on his part with regard to his intentions towards Mr. Hay and his wife? A. No, sir; I left them all good friends.

Q. Was there any change made with regard to the bath-rooms in that house? If so, what was it? A. Yes, sir; there was one bath-room left out; it was in the third story. Before I signed the contract they were curtailing the expense, and I was asked what I would allow for the third-story bath-room being left out. I agreed to take off $150.00 from the contract price. After I had taken off the $150.00 I found out that the plumber would not allow me anything, as he had only put in a bid for two bath-rooms. The plans called for three and the specifications called for two.

Q. You allowed $150.00 for what wasn't required by the contract? A. Yes, sir. I called on Mr. Mullett and got a copy of the office specifications and that called for two, and he said he didn't intend to allow me for it, so I went up to the house one morning and waited to see Dr. Piper. He was at breakfast, and when he came in and I commenced to tell him something about it he stopped me and said that if this was in regard to money matters that he was
263 not going to pay out any more money, and that he had paid out too much already. I tried to reason with him and asked him if he wanted to have me lose that much, and he walked off. He had owed me besides this about $600.00 for changes made, but I didn't care about anything so much as I did this, and I was willing to settle it for $150.00. After he refused to talk about it I went back to Mr. Mullett, and as he would allow me nothing, I went to see Mr. Hay, and after a talk together there was an arbitration and Mr. Hay paid me $75.00.

Q. That was the result of the arbitration? A. Yes, sir; the payment of that amount.

Q. Who paid you this money? A. Mr. Hay gave me his note for sixty days or ninety days, I am not sure which.

Q. Did he take it up? A. Yes, sir.

Q. What connection, if any, did Doctor Piper have in this payment? A. None at all.

Cross-examination.

Mr. LEIGHTON:

Q. This contract for the erection of this house, I understood you to say, was made in Doctor Piper's name? A. If I remember right, I said I was not positive with whom I made it.

Q. Who was the party from whom you got your pay? A. Doctor Piper.

Q. And the work was done for him? A. Yes, sir.

Q. And you referred, as I understand, from your various conversations with Doctor Piper, that it was because of his affection
264 that he had adopted them as his children, and that he was building this house as a joint home for them, and he proposed to leave it to them as a gift? A. Yes, sir.

Q That it was a pure act of friendship on his part, and that out of his affection and love for them they were to have it when he was through with it? A. Well, he did not go into details, but I remember he said that he had adopted them as his children, and at his death the property would go to them.

Q. And that was the way he spoke of it; that having adopted them, he would leave them the property? A. Yes, sir.

Q. How many changes were made in that house by the suggestion of Mrs. Hay? A. I could not say. There may have been half a dozen.

Q. This one about the change in the window was the most important made at her suggestion? A. There were several changes of windows made during the course of erection; adding and taking off.

Q. At her suggestion? A. I couldn't say at whose suggestion.

Q. Where any changes made in the house after the contract was made, at the suggestion of Mrs. Hay? A. That window that I spoke of.

Q. That is all you recall? A. She was there and made several suggestions, but they were not always carried out; for instance, they wanted a change in the door, and Doctor Piper said, if they paid the additional cost for putting in the double door, they could have it, but it wasn't done.

Q. The one change that was really made at her suggestion
265 was the change of these windows? A. I think that the most of the small changes, such as the basement windows, was at her suggestion.

Q. Doctor Piper consented to the changes? A. Yes, sir; in the completion of the building, I was given to understand from him that whatever suited Mrs. Hay would suit him.

Q. In the trimming out? A. Making the cupboards and shelves and dressers and such things in the kitchen and dining-room as a lady has to be around. He said what satisfied her would satisfy him.

Q. You say this fifty dollars was paid to you by Hay? A. Seventy-five dollars; yes, sir; he gave me his note.

Q. You don't know whether Doctor Piper gave him the money after that or not? A. No; I do not.

Q. You mean the note was given by Hay? A. Yes, sir; I signed a receipt in full.

Q. You don't know, then, really who paid it? A. Oh, certainly not.

Redirect.

Mr. HOEHLING:

Q. It was signed by Mr. Hay as the maker? A. Yes, sir.

Q. About that conversation that you had, Mr. Leighton asked you if the conversation in substance was not that he had adopted the children—that is, Mr. and Mrs. Hay—and that on his death the property would be left to Mr. and Mrs. Hay. In that same conversation, didn't I understand you to say that Mr. Hay and his
266 wife were going to take care of them during their life? A. I don't know whether I used the word would take care of, but they were going to live with them. I may have had other conversations. I have met him at the old house and many times at the P Street house. When I would go around there we would sit and chat, and he would show me his pictures and talk about his California trips, and how he met Mr. Hay, and all of that kind of business, and about how he came to build the house—a very fine old gentleman.

Q. What kind of a gentleman was the Doctor as to his mental characteristics? A. As far as I could see, I considered he was a very smart old gentleman. I suppose he was a little irritable sometimes.

Q. Was he a man that knew how to assert himself when the occasion demanded? A. Didn't want any one to dictate to him.

Q. Was he a man that would be dictated to? A. No, sir; seemed to have his own mind about things. I remember I suggested some change, and he said he did not want to make any change, and I said something about Mr. Hay wanting it, and he said, "Did he make any proposition of that kind? If he did, I will change it;" and I understood him to mean if Mr. Hay paid for it. He said he would not have any one interfere with his business.

Q. Were the changes made? A. Not that change. He said it suited him.

Recross.

Mr. LEIGHTON:

Q. Where did Doctor Piper tell you that he first met Hay? A. I can't remember that. I think it was in some professional way. He didn't go into details.

267 Q. Doctor Piper didn't go into details as to what the arrangements were—that is, to their living together? A. No, sir.

Q. You knew nothing about that? A. No, sir; I always understood that it was for Mr. Hay.

W. T. KEENAN.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Whereupon PETER S. KEMON, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name and place of residence. A. Peter S. Kemon; #403 Florida avenue, this city.

Q. And your occupation. A. My business is in fuel, feed, and builders' supplies; also steam-heating.

Q. How long have you been in that business? A. I have been in the steam-heating business about ten years; this other business about two months.

Q. You are acquainted with Mr. Hay and his wife? A. Yes, sir.

Q. You know Doctor Piper, who used to live in this city? A. I know him; yes, sir.

Q. How long have you known Mr. Hay? A. Twenty-five or thirty years.

268 Q. Where did you first meet Doctor Piper? A. I met Doctor Piper at Mr. Hay's house, between 15th and 16th Sts., on Corcoran.

Q. Did you have any connection with the matter of putting in the steam-heating apparatus in that house? A. Yes, sir.

Q. What connection had you with that? A. I had the contract for putting in the heating apparatus.

Q. When did you make that contract? Was it during the progress of the erection of the house or was it after the house was finished? A. I met Mr. Hay on the street prior to Mr. Hay's building the house, or Dr. Piper, and informed him that I was in the steam-heating business, and asked him if he had any work to give it to me. I understood that Mr. Hay was building the house, and that is the reason I informed him I was in the business. I submitted an estimate and a contract was made with Mr. Hay. I understood that it was Mr. Hay's house, and I did not know anything to the contrary at the time.

Q. It was entered into with Mr. Hay? A. Yes, sir.

Q. And what did that contract call for? A. It called for heating apparatus to heat the entire dwelling.

Q. The proposal was accepted and after the acceptance you did the work? A. I put in the plant.

Q. Do you remember how much you were paid for doing that work? A. As near as I can recollect, the price was between

269 nine and eleven hundred dollars. I was in partnership at the time with the firm of N. L. Chappell & Co.; but Mr.

Chappell didn't know Mr. Hay and I was personally acquainted with him, so therefore the contract was between Mr. Hay and myself; in fact, the payments were made to me by Mr. Hay.

Q. He made the payments to you for the whole amount? A. As near as I can recall, I think I received the full amount from Mr. Hay.

Q. The full amount that had been agreed upon? A. Yes, sir.

Q. In instalments? A. In instalments.

Q. How did he make these payments? A. By checks, signed by himself.

Q. Signed by him? A. Yes, sir.

Q. What connection, if any, had Doctor Piper with the matter of putting in that apparatus or with that contract? A. He didn't have any that I know of.

Q. Did he see you with reference to doing the work? A. No, sir; I had no dealings with Doctor Piper.

Q. Was there any difference in the putting in of the register in Doctor Piper's rooms from that of the other rooms? A. At the time the plant was installed and was in working order I came to see how it was working, and Doctor Piper complained of not having heat enough, so the radiator in his room was taken out and a larger one put in, though the same proportion of heat had been placed in that room as in the other rooms, and I thought that he, being an old gentleman, required more heat.

Q. At his request this larger register was put in? A. At
270 his request for more heat a larger register was put in. I will not say that he requested me to put in a larger register. Mr. Hay requested the register to be put in; of course, he might have complained and caused the request to be made, but I had no business relations with Doctor Piper whatever in connection with the installing of this heating apparatus.

Q. Did the putting in of the larger register increase the cost of the work? A. I think the register was enlarged without any additional expense. It is a usual thing to do where there might be a question as to the insufficiency of the heat in a room.

Q. Did you ever have any conversation with Doctor Piper after the apparatus was all in there and in working order as to the efficiency of it or otherwise? A. I think there were several conversations that would come up casually, and he expressed himself as very well pleased; so did Mr. Hay.

Q. Did Doctor Piper ever make any complaint to you as to inefficiency of the service? A. No, sir.

Q. Did you ever visit the house in the winter months, when the heat was turned on? A. Yes, sir.

Q. Did or did not the house seem to be comfortably heated? A. Well heated; no complaints. In fact, I made it a point to see that it was sufficiently heated, and it was not to see what the matter was with it.

Q. And you say you had no complaints? A. No, sir.

Q. When was it you became better acquainted with Doctor
271 Piper? A. I generally met him when I called at the house, a number of times.

Q. Was that after the apparatus was put in? A. After the house was occupied; they were living there.

Q. Did you ever call upon Doctor Piper himself? A. Well, I don't know but that I did. I had invitations from him to call there and also to bring my wife.

Q. And you did call? A. Yes, sir.

Q. Upon any of these occasions did you go up to his rooms? A. Yes, sir.

Q. Was there any topic of conversation or any study that was in common of interest to both Doctor Piper and yourself? A. The principal topic of conversation was upon art. He was interested in art, and my wife was also, and because of that we talked a great deal about art, though there were general topics discussed.

Q. You would also converse about art? A. Yes, sir.

Q. Did Doctor Piper ever make any statement to you on any of these visits with respect to the relations that existed between himself and Mr. Hay? A. Yes, sir.

Q. Will you state what the statement was? A. As near as I can call to mind, he stated that Mr. Hay and his wife were practically adopted by him, and the home was one that was erected for the benefit of Mr. and Mrs. Hay, and that they were to live with Mr. and Mrs. Hay during their lifetime, and the property was to be
272 Mr. and Mrs. Hays'. I didn't know but that the house was being built by Mr. Hay until Dr. Piper informed me. My contract had been made with Mr. Hay, and I understood it was Mr. Hay's house and I made no inquiries.

Q. And you did not know anything to the contrary until Dr. Piper had this talk with you? A. Until he gave me this information. It was a little surprise to me, in fact. I didn't know who Mrs. Hay was, and I took it for granted that she must have been Miss Piper. My acquaintance with Mr. Hay had been of long duration, but it had never been close.

Q. You didn't know about his family relations? A. No; I never noticed about the marriage, and I thought he had married a daughter of Doctor Piper.

Q. Did you from time to time see all of these parties together at their home? A. Yes, sir.

Q. What seemed to be the relations existing between them all? A. Just like one family. The best of relations; didn't seem to be any differences between them at all.

Q. Seemed to be happy and contented. A. Perfectly so.

Q. Was Doctor Piper at that time, so far as you observed from his conversation, fond of Mr. Hay? A. Seemed to be very much attached to Mr. Hay, and also to Mrs. Hay, and has often spoken of his attachment to them.

Q. In speaking of his attachment, was he enthusiastic or otherwise? A. He rather seemed to be enthusiastic.

273 Q. What kind of a man was Doctor Piper as to his disposition, temperament, nature, *and* etc.? A. He seemed to be a very clever gentleman, as far as I knew at the time.

Q. Was he a man of positive opinions or otherwise? A. At that

time he seemed to be quite positive, and especially when he spoke of the matters that were of vital importance.

Q. How long did you continue to visit Doctor Piper in the manner you have just indicated? A. After the building was completed, as near as I can call to mind, for two years; maybe a little longer.

Q. During that period did Doctor Piper refer to these relations between himself and Mr. Hay more than upon one occasion? A. Yes, sir; several times—a number of times. It was a common thing for him to remark to me about his attachment for Mr. Hay, so that I could not forget it very readily. He seemed to be perfectly devoted to both Mr. and Mrs. Hay; seemed to be pleased that it was so.

Q. Was he in the habit of bringing up this subject himself and volunteering the statement, or would it be the result of some inquiry on your part? A. Absolutely voluntary. I had no object in making any inquiry.

Q. Up until the last time you had any conversation or talk with Doctor Piper did he at any time express to you any departure from his original intentions—any change of feeling toward Mr. and Mrs. Hay? A. No, sir.

274 Cross-examination.

Mr. LEIGHTON:

Q. The plans were submitted to you for this plant, and you made a written estimate, I suppose, for this heating apparatus? A. Yes, sir.

Q. Did you keep a copy of it? A. Of the plans?

Q. Yes. A. No, sir.

Q. Was there any written memoranda of it kept by Chappel & Company? A. Not of my plans.

Q. Of the estimate? A. Well, it was their habit to file away the estimates made from the plans.

Q. You cannot tell at this time what your estimate was—exactly, I mean? A. Well, I withdrew from the firm, and Mr. Chappell retained all the papers pertaining to contracts. Therefore I have no way of getting at that now; but from my recollection of it, it was in the neighborhood of $1,000.00.

Q. That was the only writing there was about it? You submitted a written estimate for the work? A. Yes, sir.

Q. And that was given to Mr. Hay or given to the architect? A. I think that the estimate was submitted to Mr. Hay; addressed to Mr. Hay through Mr. Mullett.

Q. The architect was not connected with the work? A.
275 Yes, sir.

Q. He superintended your part of the work as well as the rest of the house? A. Yes, sir; he was supposed to have the supervision of it.

Q. You say you were paid by the checks of Mr. Hay? A. Yes, sir.

Q. No money was paid you? A. I have no recollection of any money being paid.

Q. All the checks signed by Hay? A. Yes, sir.

Q. You don't know whether he has been reimbursed or not? A. No, sir.

Q. Or anything about that? A. No, sir.

Q. You didn't know Doctor Piper when he was living with Hay in the P Street house? A. Yes, sir.

Q. Got acquainted with him after you took this contract? A. Yes, sir.

Q. You say he invited you and your wife up to his rooms—Dr. Piper did? A. Yes, sir; Doctor Piper invited me to bring my wife to visit them.

Q. How did that happen? A. We used to converse on the subject of art. He was a painter himself, and I took an interest in his work and happened to make the remark that my wife did painting, and he then invited me to bring my wife to see his pictures.

Q. How long after the house was completed was this? A.
276 It wasn't very long after they had moved into the house.

Q. Was this the first time that he spoke to you about adopting Mr. and Mrs. Hay as his children? A. After he had moved into the house.

Q. Did he tell you that at the first interview? A. I could not say positively that it occurred at the first interview, because there were a number, but I recollect very clearly of his remarks about the relations existing between himself and Mr. Hay.

Q. That is, that he had adopted Hay as his son? A. Yes, sir.

Q. And he did that because of his affection for him? A. Seemed to be through his affection.

Q. And for the same reason he was going to leave him the property when he got through with it? A. Yes, sir; I understand it was specially built for them.

Q. How did you understand that? A. From his statement.

Q. What did he say to you? A. I could not give you his conversation verbatim.

Q. Did you understand that it was built and arranged with the view of accom-odating the two families? A. Yes, sir.

Q. That was what you inferred? A. Yes, sir; and his remarks were that he wanted everything to be satisfactory to Mr. Hay; did what he wanted.

Q. Gave you to understand that the two families were going to live there together? A. Yes, sir.

Q. And the house was arranged with reference to that
277 view? A. That he was to live there, and that the house was built entirely, as near as I can recollect, in accordance with Mr. Hay's plans and wishes.

Q. Do you recall any of his conversation? A. I cannot, further than the usual conversation that we would have together.

Q. It was arranged with respect to the then existing family, wasn't it? A. Yes, sir.

Q. Doctor Piper's family consisted of himself and wife? A. Yes, sir.

Q. And there were separate rooms in the house planned for him? A. I don't know that they were.

Q. You don't know anything about that? A. No, sir.

Q. When you visited Doctor Piper, wasn't it in a room of his? A. No.

Q. He had rooms? A. Yes, sir.

Q. The rooms were separate from the balance of the house? They were distinct from Mr. Hay's part, were they not? A. I don't know that I would say they were. It was just like one family; he was upstairs and downstairs. I think he called it a studio or library that contained his pictures.

Q. And his library, bed-room, and bath-rooms were all on one floor together? A. I think there were several bath-rooms in the house.

278 Q. Do you know whether this studio or library and his bed-room and the bath-room were all on the same floor? A. I could not state positively; he may have had. I met him on the second floor; also on the first floor.

Q. How frequently did you meet him there at the house? A. I went to the house for two years or two years and a half. I have met him a dozen or two dozen times.

Q. Can you say which? A. I can't state positively whether it was twelve times or twenty-five times, but it was quite a number of times.

Q. Did you go to his room when you went to visit Mr. Hay? A. I went into the parlor at first or in the reception-room, and I have met him in the reception-room and also in his studio.

Q. How frequently did you call upon Doctor Piper in his studio? A. Independent of Mr. Hay?

Q. Well, either with or without Mr. Hay? A. I think that I saw Doctor Piper there at least three-fourths of the times that I visited the house.

Q. As many as twelve times? A. Yes, sir; fully twelve times.

Q. Did Doctor Piper always speak to you about his relations with Hay every time you saw him? A. I could not say he did.

Q. Upon any of these times that you saw him did he talk about these relations? A. So many times that it made an emphatic and indelible impression upon my mind, so that it left no doubt as to what his intentions were in the premises. It was something that I wasn't especially interested, but he volunteered it to me,

279 though, of course, I felt an interest in Mr. Hay.

Q. Are you a member of the same order as he? A. I am not a member of any order.

PETER S. KEMON.

Subscribed and sworn to before me this 15th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Whereupon RICHARD K. EVANS, a witness of lawful age produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name and place of residence. A. Richard K. Evans, # 422 4th street, this city.

Q. And your occupation A. I am a lawyer by profession.

Q. You are a brother-in-law, I believe, of Mr. Hay, party to this cause? A. Yes, sir.

Q. Are you acquainted with the defendant Richard U. Piper? A. Very well.

Q. When and where did you first meet him? A. I met Doctor Piper first when he came back here with Mr. Hay on a visit, just after they had a suit in Philadelphia; it must have been in
280 1883. He came here for a visit and stayed about five or six weeks, and I became quite well acquainted with him.

Q. Where was Mr. Hay living then? A. # 1535 P street.

Q. Was Mrs. Piper with him? A. Yes, sir.

Q. They stayed about five or six weeks? A. About six weeks. I became very well acquainted with Dr. Piper, not so much with Mrs. Piper, but I knew her, too, in a social way.

Q. Did you go to the house often during that period? A. Oh, I was in and out all the time, sometimes two or three times a week, sometimes two or three times a day. We used to dine together, backwards and forwards.

Q. Did Doctor Piper and his wife come to your house? A. Called on a couple of occasions.

Q. And you and your wife went to Mr. Hay's house? A. My wife would go in the afternoon and I would go and bring her home. It was a family intercourse.

Q. Did you ever have any conversation at that time with Dr. Piper in relation to the matter of his taking up his home with Mr. Hay? A. No; not at that first visit at all.

Q. When he left the city, after his visit to Mr. Hay, do you know how long it was again before he returned to Mr. Hay's house? A. I should think it was in March or February, 1897; I should have said 1887, when he came back here, as I supposed, then on a visit, as I did not have any idea that he intended to remain her- until later, when he told me about it.

281 Q. Was his wife with him when he came back? A. Yes, sir.

Q. Did he take up his place of abode with Mr. Hay? A. Yes, sir; and then I imagined it might have been a matter of visiting until he brought up the subject himself and stated to me that he had come here with the intention of remaining as a permanent factor in the residential way; that he had made some arrangement with Mr. Hay, and he afterwards told me what it was.

Q. What did he state? A. That he thought Washington was a lovely place for him to live in; that he had substantially agreed to adopt Mr. and Mrs. Hay, and that Mr. Hay and his wife had agreed

to look out for them (I guess that is the very expression he used) during his entire life, and when he got through with what he had in the world he would convey it by will or otherwise to Mr. Hay and his wife.

Mr. LEIGHTON: The answer, so far as it relates to real property, is objected to as in violation of the statutes of frauds relating to real property.

Q. Did he at that time communicate to you what property he had? A. I knew nothing about it, except he said, "I am going to live here always with Ned and Florence, and they are to take care of me all my life and make it comfortable for me." It seemed to me that he had had no comfort in his life; he was isolated in some way, and he finished by saying, "And I am going to take care of them in consideration for that."

282 Q. Up to that time had there been any talk about building this Corcoran Street house? A. It must have — somewhere in May or June—in the early summer of 1887—when I talked to him about it. I wish to state here that I knew Doctor Piper in a peculiar way. I found out that the Doctor knew about and was interested in a number of things that I was also interested in. He was a good chemist, which I am up in, and I used to go into his room and talk with him about that in the way of adulteration of foods, and he used to be a lovely user of India ink. (He used to think he could paint, but I never believed in that.) I was up in India-ink drawing, and we used to talk about that, and we had frequent conversations on the subject of adulteration of foods, and he was a shrewd, cautious business man about that, and nobody could have fooled him in anything he was doing, and I was invited as a sort of an individual whom he rather thought appreciated him. So when he was at # 1535 P street, when I would go there and be downstairs, he would send his wife down and ask me to come up, and we would discuss things that were interesting to both of us. He told me on many, many of these occasions about his affairs. He said, "Now, I have arranged with Ned or Edwin (he always called him Edwin, but I never did) that he is to provide for me for my life, and in consideration for that I am going to return it by giving all I have to him."

Mr. LEIGHTON: Answer of this witness is objected to in so far as it relates to any real property that Doctor Piper had, as it ought to have been in writing in order to satisfy the requirements of law.

Mr. HOEHLING:

283 Q. Were you present at any of the conversations about the feasibility of getting another lot and erecting a house? A. Oh, yes; I heard Doctor Piper say this himself that the house on P street was too small, and that he proposed to build a house which should be sufficiently large for all of them. He even explained that some of Ned's children might be married and there would be another family. I think it was on one Sunday after church that he stopped by my house and made the remark in the

course of our talk that he would have such a house as would accom-odate him and any other children that Edwin should have.

Q. How many rooms did Doctor and Mrs. Piper occupy in the P Street house? Was it a large house? A. It was not a large house, and was rather crowded. There might have been more room—much more room.

Q. The Hay family didn't have as much room after the Pipers came as they had before? A. One story was occupied by Mr. and Mrs. Piper.

Q. Which story was that? A. The third.

Q. How had that been occupied before? A. It hadn't been occupied except by the children, and they moved down.

Q. How many servants did Mr. Hay keep at that time? A. Two before the Pipers came there. I think he had only one, and I generally knew about how the household was run.

Q. What seemed to be the relations existing between the Hays and the Pipers when they were all living there together in the P Street house, pleasant and cordial, or otherwise? A. The most cordial that could be. The Pipers dominated the thing—that is, like
284 any child should be deferential to its parents; that was the style that went on there.

Q. Do you mean by that that the Hays deferred to the wishes of the Pipers? A. Yes; much to my annoyance, because when we wanted to go somewhere they would always ask the Pipers about it.

Q. They were consulted, then? A. The Hays were often thinking of going to the theatre with us, and if Mr. and Mrs. Piper didn't want something to happen they didn't go; it was always that way.

Q. Did Mr. Piper seem to be happy, and his wife also? A. Lovely woman, and they were perfectly amicable with Mrs. Hay; I know that. I went away in 1887, and up to that time he was devoted to Mrs. Hay.

Q. Did Mrs. Hay treat Doctor Piper with consideration? A. Why, I know that she rather put her wishes aside always for him. I know that because if we all wanted to go somewhere together she would say that Doctor Piper wanted this and that and the other, and she used to defer to him. Doctor Piper never went to the theatre, and these folks, being younger, used to want to go often, but if the Pipers didn't want them to go they stayed at home.

Q. The Pipers spent most of their evenings at home, didn't they? A. Yes, sir.

Q. And on that account the Hays stayed with them? A. Dozens of times that I know of.

Q. Before the Pipers came to their household had the Hays been in the habit of going around in the evening? A. Free to go and come as they pleased.

Q. Were they in the habit of going and coming? A. Yes; and did.

285 Q. After the house was started, did you have any talk with Doctor Piper about the house? A. On quite a number of occasions I talked with him, and the Doctor told me this: "I am going to build this house for Mr. and Mrs. Hay, or, as he said, for

Edwin, as he always called him, and they have agreed to take care of me all my life and my wife, and we are going to have this house to suit him." Then I did not talk with him much about it until late in the summer or late in the fall, when I met him on 16th street, and the Doctor came up and after greeting me said, "Have you seen the new house?" and as I had not and had paid no attention to it, he said, "Come around now and look at it," and I walked up 16th street and around into Corcoran, and we stood there and talked quite a little while, and he said, "You will observe that I have arranged all this lower floor so it can be thrown into one, but since this house is going to belong to Ned and Florence, I have arranged it so that they can entertain." We talked quite a while, and he said, "Don't you think that will suit Mr. Hay and his wife or Edwin and Florence, as he called them; what else could I do for him for taking care of me all the rest of my days; could I do anything nicer than that?" It seemed that he had arranged the house just so they could entertain, and he said that Mr. Hay and his wife were to look out for him all the rest of his days, and that he was going to leave them all he had when he was through with it.

Mr. LEIGHTON: That part of the answer is objected to for the reasons hereinbefore stated.

Mr. HOEHLING:

286 Q. That, you say, was probably in the month of August, 1887? A. It must have been the latter part of August, because I went to Europe the following January.

Q. That would be in 1888? A. Yes, sir.

Q. Up to the time you had left, the house had not been completed? A. No; the time I went to see it, when I had this conversation with Dr. Piper, there was only the brick-work and the framework inside, just the joists and partitions.

Q. Between the time of this conversation and the time you left, did you continue to see Doctor Piper? A. In the following month I met Doctor Piper in Mr. Hay's office, and there was no difference in the relations then.

Q. What seemed to be the relations between them up to the time you went to Europe? A. The most favorable and friendly and fatherly.

Q. Happy? A. Yes; Ned Hay always called them Father Piper and Mother Piper. The children spoke of them as Grandma Piper and Grandpa Piper, little Ned especially. My wife always treated them with great consideration and deferred to them because of the relation they bore to Mr. Hay.

Q. Did your wife become quite intimate with them? A. Yes, sir.

Q. What were the characteristics of Doctor Piper in regard to his temper-ment and nature? A. He was a clever old gentleman and thoroughly wise.

Q. Did he have any peculiarities of any kind? A. Oh, yes; he

would demand of anybody more than anybody could give. He was a crotchety old man.

287 Q. Would you consider Doctor Piper, from what you knew of him, a man that would be easy to get along with in a household? A. On the contrary, quite different; it would not be possible to get along with him except that you allowed him to have everything his own way.

Q. Positive or otherwise? A. Very positive and very whimsical, but his whimsicality was not due to the fact that he was not perfectly sound mentally, because he was bright always.

Q. How long were you away in Europe? A. Ten years.

Q. You know nothing about what happened since you went away? A. No, sir.

Q. Doctor Piper had in the meantime left the city and his wife had died? A. Yes, sir.

Cross-examination.

By Mr. LEIGHTON:

Q. Your acquaintance commenced with him in the P Street house, when he was on a visit here? A. Yes, sir.

Q. How many children did Mr. Hay have at that time? A. Two.

Q. How many in his family? A. Mr. Hay and his wife and the two children and the servant.

288 Q. Mr. Hay and his wife and two children? A. Yes, sir.

Q. How large was the house on P street; how many rooms? A. I think about ten rooms—ten or eleven.

Q. Do you know whether this suggestion to build a new house to accomodate the two families was agreeable to Mrs. Hay or not? A. Why, I think so.

Q. Have you ever heard her express herself in respect to it? A. I have heard her express herself favorably to it.

Q. You say that Doctor Piper was — crotchety old man, difficult to get along with. Give instances showing upon what you base that statement. A. Well, on questions of temperature, questions of dress, questions of leaving the door open, occasions when he would ask me to throw my coat over his shoulders or to lend him my coat, when every one else would be too warm without one. He was susceptible to heat and cold and such things as that.

Q. Was he irritable? A. Yes, sir.

Q. Got mad easily? A. Don't think he got mad easily in the sense you would call a man angry, but he was petulant.

Q. How did he manifest that? A. Well, he would walk off and leave you.

Q. Did he ever show any evidences of petulence towards Mr. Hay or his wife and children that you saw? A. Yes; he did in a way that I should not have put up with and I told them so. For instance, he would have his dinner and then he would want to

289 go away and leave everybody else and call off his wife or call off the servants, but they seemed to think, as he was an old gentleman, that it was all right.

Q. Did Mr. and Mrs. Hay never find any fault with him? A. They used to humor him by trying to make it comfortable for him, and following him in order to see that he had what he wanted.

Q. So far as you observed? A. As I observed it.

Q. Do you know whether or not the children were taught to call Mr. and Mrs. Piper grandpa and grandma? A. I have heard little Ned call them grandpa and grandma quite frequently.

Q. You say you have heard them? A. Yes.

Q. Do you know if it was taught to them by their parents? A. I don't know who taught it.

Q. Was the condition of Mr. and Mrs. Piper such as required the constant attendance of either Mr. or Mrs. Hay? A. I should say that in order to have Mr. and Mrs. Piper comfortable that Mr. and Mrs. Hay would have to devote their entire attention to them.

Q. How do you know that? A. From my observation of things in the house.

Q. That they were kept in from their recreation and from their social duties and pleasures, because of the attention necessary to be given to the Pipers? A. A great many times to my knowledge.

Q. At the time you were there were Mr. and Mrs. Piper there on the second story? A. Why, no.

290 Q. They were in the habit of staying in their room? A. Why, no.

Q. Where were they? A. Sometimes in the sitting-room and sometimes in the other rooms, but they always wanted the attention of Mr. and Mrs. Hay, and demanded it.

Q. How was it demanded? A. From the sense of gentility.

Q. It required their presence at home to entertain them? A. Of course, the Pipers being older people and the Hays being under the obligation that they were to do certain things, if Mr. or Mrs. Piper didn't want them to go they would remain at home.

Q. Do you know any instances of that? A. I do know of it.

Q. It wasn't necessary because of their condition physically, but because of this understanding between them? A. They understanding was that Mr. and Mrs. Hay should defer to Mr. and Mrs. Piper, and they did, and if we all wanted to go out somewhere—that is, my wife and I and the Hays—and Mr. and Mrs. Piper didn't want them to go, they didn't go.

Q. That is what you mean by saying they deferred to them? A. They deferred to them; yes, certainly. If they wished them to stay at home they stayed, and seemed always that they stayed there—it just happened that way. I used to "kick" about it a great deal, when the Hays and I were going out together, because, much as I was fond of Doctor Piper, I thought he was kind of cretchety.

291 Q. What was Mr. Hay to do for Doctor Piper? Was he to furnish him with his table food? Was Doctor Piper to board with him during his life? A. The Doctor said to me that "Ned is to take care of me. He has agreed to do that all my life, and I have agreed to leave Ned all I have and I am going to adopt them." Now, whether he over adopted them or not I do not know.

Q. Did Mr. Piper say that Mr. Hay was to furnish him medical attendance in case he was ill? A. Of course, he didn't.

Q. Was Mr. Hay to furnish him with his table food without compensation? A. He never said anything about that—nothing of the sort.

Q. You don't know, then, what the terms were? A. Yes; I did.

Q. What were they? A. He says, He has agreed to take care of me all my life.

Q. What did he mean by taking care of him? A. You must ask Doctor Piper that.

Q. He didn't tell you what he meant by that remark? A. He spoke the English language. I thought he knew what he meant.

Q. You don't know whether Mr. Hay was to furnish him his table food or his clothing or attendance when he was ill, or what he meant by taking care of him? A. I didn't ask him.

Q. You don't know what he was to do? A. I know what he did do.

292 Q. From what did you get the impression that Doctor Piper had no friends and was isolated and unhappy? A. Why, I never got that impression; never have expressed it at all. It is ridiculous for anybody to have expressed it.

RICH. K. EVANS.

Subscribed and sworn to before me this 17th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Adjourned until 2 o'clock Wednesday, April 21.

SATURDAY, *April 24th*, '97—2 o'clock p. m.

Met pursuant to agreement to continue the examination of witnesses on behalf of the complainant.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, Esq., counsel for the defendant.

Whereupon HANNAH FRANEY, a witness of lawful age produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name. A. Hannah Franey.

Q. Where do you live? A. My service place is with Mr.

293 Hay, # 1512 Corcoran*coran* street.

Q. How are you employed? A. I am the nurse.

Q. How long have you been employed by Mr. Hay? A. Sixteen years.

Q. Where were the Hays living when you — first employed by them? A. P street—I don't remember the number—between 15th and 16th, near the corner.

Q. How were you employed in that house? A. When I first went there I went as cook.

Q. Who composed the family of Mr. Hay when you first went there? A. Just Mr. Hay and Mrs. Hay and one little child; he was then about a year and a few months.

Q. Were you living with Mr. Hay at that house at the time Doctor and Mrs. Piper came there on a visit the first time? A. Yes, sir; the first time they came I was there.

Q. You remember that occasion, do you? A. I do; I waited on them; appeared to be very nice old people, too.

Q. When they came to the house on that first occasion did they live with Mr. Hay? A. Lived with Mr. Hay; yes, sir.

Q. And they occupied one of the rooms in that house? A. One of the rooms up over the sitting-room.

Q. How long did they remain on that occasion? A. As near as I can come to it, six weeks, just about; they were on a visit
294 and would have stayed longer, but Mrs. Hay had to go to Frederick. Her mother was taken very ill, and Mrs. Piper said as she was going away from home that they would not stay any longer.

Q. How were the Pipers treated when they were there at that time? A. Treated just as the family.

Q. Did their presence there cause any extra work or preparations? A. As company always do; they had just whatever they wanted; they always tried to accommodate them.

Q. You say they remained about six weeks? A. About six weeks.

Q. And then they left? A. Yes.

Q. Do you know where they were going when they left? A. No; I don't know; they didn't say to me, of course; I was only cook.

Q. During the occasion of that first visit was anything said, so far as you know, as to Doctor and Mrs. Piper making it their permanent home? A. Yes; Mrs. Piper said to me one day that she would like to come and live with Son Edwin; that she wanted to do it so much, and that she thought they would all be happy together; and then when she went away she wrote back, and Mr. Piper did, and they were very anxious to come and make it their home, and they wanted to live with no one else but with Son Edwin.

Q. Do you know whether or not, while Doctor and Mrs. Piper were away, after they had left that time, there was any discussion between Mr. and Mrs. Hay, or conversation, in regard to
295 whether they should take the Pipers to live with them or not? A. I don't know what Mr. and Mrs. Hay had to say, but when Mrs. Hay would get a letter she would *she would* tell me about them and how anxious they were to come.

Mr. LEIGHTON: I object to these conversations between Mrs. Hay and her servant as irrelevant.

Mr. HOEHLING: You say it was discussed about their coming?

A. As far as I know, Mrs. Hay would tell me they wanted to come and make their home with them.

Q. About how long was it before they actually did come? A. I don't know exactly what time.

Q. Was it some little time? A. It was a good bit of time; about a year; some length of time. Not having anything to do with it, I didn't pay any attention to that part.

Q. Were there any preparations made at the house before Doctor and Mrs. Piper came? I mean for their coming. A. Oh, yes. They had to get new things, and they had the room papered and everything fixed up, and Mrs. Hay said if there was anything else when they came that they wanted she would put them in.

Q. You say they had the room papered? A. Yes.

Mr. LEIGHTON: Statements of Mrs. Hay are objected to as hearsay. It is understood by counsel for complainant that any statement made by Mrs. Hay is objected to as hearsay and irrelevant, and that this objection shall apply to all questions of that nature put to this witness and any answer that she may make.

296 Mr. HOEHLING: How many rooms were papered for Doctor and Mrs. Piper before they got here?

A. Two rooms. He said he wanted one for the painting and a room to sleep in.

Q. Were both of these rooms papered? A. Yes; the back and the front room were both papered.

Q. Do you know whether new furniture was bought for these rooms? A. Yes; we had to fit them up. Everything was bought for them that we put in.

Q. Do you know whether or not they bought new bedding and bed? A. Yes; we had to get everything for the rooms.

Q. Then they arrived, I presume? A. Yes.

Q. And they took possession of these two rooms and occupied them? A. Until they built this new house.

Q. On Corcoran street? A. Yes, sir.

Q. Now, were any directions given you by either Mr. or Mrs. Hay with regard to showing any attention to Doctor and Mrs. Piper? A. Oh, yes.

Q. What were you directed to do? A. Just anything they asked for; to wait on them and look after them just like the rest of the family and see they had just what they wanted.

Q. Did Doctor and Mrs. Piper ever give you any directions
297 as to particular things they wanted done? A. Mrs. Piper would come down and tell me how he liked his rice and how he wanted his steak and just whatever he wanted. She was very nice about it, and we always like to do just as any one likes. We never got angry when she would come and tell us what to do.

Q. When she told you how she wanted these things done, would you do them in the way she told you? A. Yes; and she was always satisfied.

Q. Now, did you make any change in the meal hours after the Pipers arrived in P street? A. He always wanted his breakfast sharp at eight o'clock. Mr. and Mrs. Hay never were ready for the breakfast at eight before they came, and they would ring the bell

when they wanted it; but after the Pipers came I used to cook just enough for them two, for the Pipers, and then cook another breakfast, because I did not want it to dry out.

Q. The Pipers would want their breakfast at eight o'clock sharp? A. Eight o'clock sharp they had their breakfast.

Q. How about the noon-day meal? A. 12 o'clock sharp for the Doctor.

Q. Was he particular about that? A. Oh, yes; he must have it just then or he would get faint, he said, and sometimes he would be busy and would not look at the time; but he said he knew when the time came, and he must have his lunch, and if I wasn't there just on time he would call me.

Q. How about the dinner hour; what was that? A. Six o'clock sharp; that was said to be dinner hour for all except Mr. Hay. He was never there at that time, but we always had the Doctor's ready.

298 Q. What time had you been in the habit of having the dinner for the Hay family before the Pipers came? A. 6.30.

Q. Do you know why it was changed to six? A. Because the Doctor said he would like to have it, and Mrs. Hay said we could have it just as well as not, and Mr. Hay said if he is not there to dinner just to have it without him.

Q. And you would have it at six o'clock? A. Just at that time, and we would wait on "grandpa" and "grandma," just as we always called them.

Q. When Mr. Hay was't there, you kept dinner for him? A. Keep just his dinner; yes, sir.

Q. What seemed to be the relations during that time between Doctor and Mrs. Piper on the one hand and Mr. and Mrs. Hay on the other? A. Just like father and mother.

Q. How did Doctor Piper refer to Mr. Hay? A. He used to act toward him just as he would to his own son; a great many people thought he was.

Q. Have you ever heard him refer to Mr. Hay as his son? A. He always called him "Son Edwin;" never anything else, and Mother Piper always called him Son Edwin, and he would say Mother Piper and Father Piper.

Q. How would he refer to Doctor Piper? A. It would be Father Piper.

Q. How did the children of Mr. Hay refer to the Doctor and his wife? A. Grandma and grandpa; they never knew anything else; always called them that.

Q. How did the Pipers refer to the little children? A.
299 They were very affectionate to them. They had one of the children named after Mother Piper.

Q. One of the children? A. Yes; the one we lost, a little girl.

Q. Was that child born before or after the Pipers came? A. After they came.

Q. And she was named after Mrs. Piper? A. Yes, sir. After they came into the house the baby was brought down from Frederick.

Q. Did Mrs. Piper seem to be fond of the children? A. She seemed to be particularly fond of them; she used to come in and nurse them while I had my meals sometimes.

Q. Was she a woman of affectionate disposition? A. Very.

Q. Did the children seem to be fond of the Pipers? A. They never knew any difference but that they were really related to them until the little eight-year-old one wanted to know what made them have three grandmas and three grandpas.

Q. Now, do you know how long it was that the Pipers lived there in the P Street house before the other house was started? A. It wasn't very long, but I don't know exactly.

Q. You say it wasn't very long? A. It wasn't very long. They were talking about it a good bit.

Q. Was that P Street house somewhat crowded after the Pipers came there to live; was the house large enough? A. It wasn't, not to say give them sufficient room like they wanted. Mr. Piper used to paint a good deal and he had a great many pictures, and
300 he said he didn't have room enough for all his painting.

Q. And it took a great deal of room for these pictures? A. Yes, sir; and then we had a shed built out back of the house and he used to take them out there in the sun to dry them.

Q. He used that to dry his pictures on? A. Yes, sir.

Q. Did Doctor Piper ever say anything to you about that house—about whether it was large enough or not? A. He used to say that it is not large enough and he intended to build a larger house, a double house, and he said then there would be room enough for Son Edwin, and that Edwin had so much company that it wasn't large enough. I said it was plenty large; that "there is nothing like having your own chicken coop," and he said this one which he was going to build would be his, too—for my "Son Edwin and Florence."

Q. Was that while he was building it? A. When they began to look about for a place for it.

Q. Did you ever have any other talks with him about that house while he was building it? A. He would say I would enjoy it, but I told him I didn't think I would enjoy it, because I was perfectly satisfied where I was, and he said the children would have more room.

Q. How long was that house being built; some time, wasn't it? A. I don't know exactly. I think it was right smart while.

Q. Did he ever tell you the reason why he was building the house, except that the other one was not large enough? A. He said he wanted a larger house to make Edwin a present of; at his death it would come to Edwin and the children.

301 Q. Now, after the house was built I suppose they all moved over there? A. Yes, sir; the first of August.

Q. What kind of a house was that one on Corcoran street? A. A double house, and a very large, convenient house.

Q. Was it nicely furnished and fitted up? A. Of course, we had to fit it up by degrees, because a large house like that takes a great deal of furniture.

Q. Did they take over all the furniture from the P Street house? A. Everything.

Q. Did Doctor Piper and Mrs. Piper bring any furniture into the P Street house? A. They didn't have any in the P Street house, but afterwards they sent on and got a good many things.

Q. Have them in the Corcoran Street house? A. Yes, sir.

Q. How many rooms did the Pipers have in that house? A. They had two large rooms, and a large-sized attic, and a smaller room, and a bath-room.

Q. That was their private apartments? A. That was their private rooms.

Q. Now, when you went into the Corcoran Street house were any additional servants employed? A. Yes; we had to have a man to attend to the furnace and do any errand that the Doctor wanted.

Q. Up to that time had you been cook? A. I was the nurse.

Q. Who had attended to the cooking? A. I was cook until they came, and then after they came I began to take care of the children and we had to get a cook. Then I had to see after
302 everything and that they had everything as they wanted.

Q. Then when the Pipers came into the P Street house did you attend to the cooking for the family? A. I attended to the cooking until we moved in the Corcoran Street house.

Q. Then, you say, they got a cook? A. Got a cook.

Q. And you were nurse and waitress? A. I was nurse and just saw after them, and then they had to get a waiter girl just to be right at hand all the time.

Q. They got a waiter girl? A. Yes; she is in the room there.

Q. Who was the cook you got? A. Her name was Josephine; she has died since that.

Q. Then, if I understand you right, when you went into the Corcoran Street house they got a cook, a man to attend to the furnace, and a waiter girl. Is that it? A. Yes, sir; a cook, a man to attend to the furnace, and a waiter girl.

Q. And you remained as the nurse for the children and to wait on the Pipers? A. Yes; attend to the Pipers; just anything they wanted.

Q. The arrangement with respect to the meal hours that had existed in the P Street house continued in the Corcoran Street house? A. Yes, sir.

Q. Was the breakfast at eight? A. Eight o'clock sharp.

Q. How about the lunch? A. At twelve sharp.
303 A. And the dinner? A. Six.

Q. Did Doctor and Mrs. Piper have their lunch downstairs in the dining-room or in their own rooms? A. They had it in their own rooms. They preferred it, as they were not disturbed by people coming in.

Q. Did they have it there every day? A. Every day.

Q. At 12 o'clock? A. Yes, sir.

Q. Who carried the lunch up? A. Well, when I could not the girl or man did it; just so it got in there and was properly attended to.

Q. Did they have a little table in there? A. Table, tablecloth, and napkins.

Q. Would you set the table for them? A. Yes, sir.

Q. And in addition to that, was there another lunch downstairs for Mrs. Hay and the children? A. 12.30 the lunch was on the table for them, but the children were never in in time.

Q. Did Doctor and Mrs. Piper have their washing done by the servants in the house? A. They hired the washing done. The bed clothes were washed at the house, but not their body clothes; those they paid for.

Q. Who paid you your wages? A. Mr. Hay.

Q. Did Doctor or Mrs. Piper pay you any part of your wages? A. No more than when I would sweep her room she would give me a quarter.

304 Q. Did Doctor and Mrs. Piper give any directions or orders in that house from time to time? A. Just whatever they wanted done for themselves.

Q. Anything they wanted done? A. They always came and asked it to be done.

Q. Would the servants do it? A. Of course; certainly; we had nothing else to do. That was the orders when they came in. Mrs. Hay said whatever they requested to be done we must do, because she said, "They are coming in now as our father and mother, and we want them treated that way."

Q. Were they treated that way by Mr. Hay and his wife? A. Yes, sir.

Q. Did they appear to be happy? A. They appeared to be very happy, as far as I know.

Q. Do you know whether or not Mrs. Hay showed Mrs. Piper any attention—whether she took her around with her and went out with her? A. Yes, sir; any time she could leave the Doctor. He was always complaining, and sometime she would leave him—he would let her go—and they would visit some friends or go downtown; then Mrs. Hay would go with her; she always did when Doctor Piper would let Mrs. Piper go out.

Q. Did Dr. Piper go out much at night? A. Not a great deal; just his evening walk after dinner. Then he would be in, and he was very fond of sitting up at night reading, and Mrs. Piper would read to him a great deal.

Q. Did Doctor Piper seem to be fond of Mr. Hay? A. Very fond.

305 Q. Did you ever see any evidences of his fondness for him? A. Yes; met him in the hall and in the dining-room and patted him on the shoulders and called him Son Edwin.

Q. How did the children treat Doctor and Mrs. Piper? A. I don't think they could have treated them any better if they had been their own blood grandparents.

Q. Were the children ever rude or disrespectful to them? A. Never that I knew; never heard the Doctor complain of it.

Q. Are they well-behaved children or otherwise? A. Always are. We tried to bring them up as nicely as possible.

Q. You had something to do with it? A. I raised them.

Q. How was that house heated? A. Steam heat.

Q. Comfortable in the winter time? A. I never heard any one complain of it being any other way. Doctor Piper, he was thin-blooded, and he was always chilly, and they had a Franklin stove put up in his rooms besides the steam.

Q. Did he keep his rooms hot? A. I never could have stood it in there the coldest days.

Q. So far as you observed, did or did not Mr. Hay and his wife consult the Pipers in their wishes in the house with respect to anything, matters general? A. Yes; they used to ask them always. Mrs. Hay wanted Mrs. Piper to go to market with her to see the vegetables and to walk around with her and get little things.

306 The Doctor's tastes were entirely different from *the* ours. He couldn't eat what the rest of them had. He never touched veal and any kind of salt meats, and we always had to keep such as he wanted in the house.

Q. You had to pay especial attention to his diet? A. Yes; he was very particular about his food, and we used to buy things for him different from the rest and just as he used them, to be sure it was fresh, especially in hot weather.

Q. Now, when the Pipers came to live with the Hays at the P Street house, had Mr. and Mrs. Hay been in the habit of going out much in society and entertaining their friends at the house? A. They always had a great deal of company at the house, and they went out a great deal, too.

Q. Did they have much company at the house? A. Yes, sir; they were regular society people.

Q. Are they very fond of that? A. That is the way they live; yes, sir.

Q. Now, when Doctor and Mrs. Piper came, did they go around as much as they had before? A. Not beginning as much, unless they could take Mother Piper, and very often the Doctor would let her go; but on many occasions he would not want her to go, and Mrs. Hay would stay at home and sit with them.

Q. Stay with them? A. Yes, sir. Doctor never cared for company much himself; he would always rather be by himself, at nights especially. His room was just across from the sitting-room, and he would go backwards and forwards.

Q. How was it in the Corcoran Street house about going out at night? A. Just the same way.

307 Q. What kind of a man was Doctor Piper in his disposition? A. He was a very nice, amiable old man, I think, for an old person. I never think an old person's disposition is pleasant at times. Every one has his own ways.

Q. Did he have his own ways, as you call it? A. Oh, yes, indeed.

Q. How was Mrs. Piper? A. Very nice; just as agreeable as she could be.

Q. Was Doctor Piper a man of a weak disposition, or otherwise?

A. He seemed to be very weak and run down, and he used to have fainty sick spells.

Q. Was he sick in bed? A. Never right down, but always ailing.

Q. Did you hear him complain much? A. Yes; he would tell me about what a wretched night he had, and I would ask him why he didn't call me, and he said nobody could do anything for him; that his wife was right there, and she was the one he wanted.

Q. They were quite an affectionate couple? A. Yes, sir.

Q. Do you remember when they went away to Saratoga? A. Yes. I went to the carriage with them.

Q. It was in the winter, wasn't it? A. It was just about this time of the year; not quite as warm as it is now.

Q. Did they tell you where they were going? A. No; they didn't tell me. They told me good-bye, and said they would be back soon.

308 Q. Said they would be back soon? A. Yes; but Mrs. Piper was taken very sick while they were away.

Q. Was she sick when they went away? A. No, indeed. He wasn't very well, and that was the reason, I think, they went away

Q. You never saw her any more? A. Never any more until she came back a corpse.

Q. Was the body brought to Mr. Hay's house? A. No; they got in too late, and it was the request not to be brought to the house.

Q. Whose request? A. Doctor Piper's. They brought her by, and the family all followed it to the grave.

Q. Did you go to the cemetery? A. Yes, sir.

Q. And saw her buried? A. She was vaulted.

Q. Doctor Piper didn't return on that occasion? A. He didn't. We never expected him, but he was sick all the time, and he never gained any strength at all after the death of her. He kept running down, as far as I could hear from him.

Q. Have you ever seen him since that time? A. Never seen him since he went away.

Q. About how long ago was that that he went away; several years ago? A. The baby then was just about a year and a half or two years old, and now he is eight.

Q. Now, after the death of Mrs. Piper were you expecting at the house the return of Doctor Piper? A. Yes; we expected him all the time.

309 Q. Were his rooms kept for him? A. He locked his rooms up and took the keys with him.

Q. When he went away? A. When he went away.

Q. How long did they remain that way? A. Why, from the time he went away until, I think, about year and a half since the rooms had been opened, when some doctor or other came. About two years ago he sent a doctor there and got his furniture and a good many things of his.

Q. Out of those rooms? A. Yes; brought the keys with him then.

Q. And did he get these things? A. He emptied the rooms; took out everything that was fit for anything, this here doctor did—

I forget his name, Dr. Wilson, I believe—but I never paid any attention to that, so I don't know exactly. He asked me if there was anything more of the Doctor's, and I said that the Doctor ought to come and get his things himself.

Q. He got the things and took them away? A. Carried out a lot of the Doctor's things.

Q. Take his paintings? A. All his paint works, handsome works. I said after he had gone to Mrs. Hay that I didn't believe she ought to have let that old man have those things, because I didn't believe the Doctor sent for them.

Q. Did he leave the rooms open? A. He locked the rooms up and turned the key over to Mrs. Hay, and said the Doctor told him to leave the keys there.

Q. The keys were then given to her? A. Yes; and then after that we discovered that the carpet, and it was a very hand-
310 some carpet, had been literally eaten up by moths.

Q. During the time the rooms were locked up? A. Yes.

Q. Did you clean the rooms? A. Cleaned up everything.

Q. And what was done with the rooms then? A. Just locked them up and aired them once in a while; kept them locked up until here about a couple of months ago. They have been occupied—used them for some company.

Q. And up to that time had they been kept locked up ever since he went away? A. All the time; yes, sir.

Q. Did you hear Doctor Piper or Mrs. Piper say they wanted anything done, or know of any wish that they wanted in that house that wasn't carried out? A. Never in my life.

Q. Did you ever witness Mrs. Hay treat either Doctor or Mrs. Piper unkindly or rudely? A. Never saw anything of it; never even heard of it.

Cross-examination.

By Mr. LEIGHTON:

Q. You say that Hay had one child at the time the Pipers came there to live in P street? A. One little boy.

Q. When was the next child born? A. I think Ned was five years old when the little girl was born, I think he was.

Q. Were you living in the P Street house when he was born? A. When the little girl was born?
311 *A.* Yes. *Q.* Yes.

Q. Was any other child born there? A. No.

Q. When was the next child born? A. In Frederick.

Q. When was that? A. That was three years after.

Q. Where were they living then? A. Still in the P Street house.

Q. How many children has Mrs. Hay had altogether? A. Three. These are the only ones.

Q. One of whom has died? A. She wasn't born in the P Street house; she was born in Frederick, but they were living in the P Street house then, and the little boy that we have now, he was born in Corcoran street.

Q. How many rooms are there in the P Street house? A. I don't know; three on one floor and three on the next, and the hall rooms.

Q. How many stories high is the house? A. Three stories high; the basement and the parlors and the others—no, I think it is four stories high.

Q. Well, were there as many as two rooms on each story? A. Yes, sir.

Q. More than two? A. Three, because we had an addition put on and the yard built up into rooms, and then we got three on each floor.

Q. And the building was four stories high? A. Yes, sir; I am certain it was.

Q. And besides that there were hall rooms? A. Yes; two small rooms.

312 Q. Did Mr. Hay have anybody living with him at the house at the time the Pipers first came there? A. No one but his own family.

Q. That consisted of himself and wife and one child? A. Yes, sir.

Q. Where were the Pipers put, on the second or third floor? A. On the third floor, because they preferred being up there.

Q. Front room? A. Front room and back room.

Q. Hadn't been used until they came there? A. Wasn't used.

Q. Wasn't papered until they came? A. Not until they came. When they came for the first visit they had the second room, because they were not fixed up, up here.

Q. Never had been papered? A. Not until we fixed it up for them.

Q. Plastering was cracked in places? A. Yes.

Q. Wasn't really fit for any one to sleep in? A. Except it had been papered and fixed up; yes, sir. Just had it for the children to play in, for the little boy and his company that would come in.

Q. Then they put on some paper and put in a bed and carpet. Do you know whether Mr. Hay paid for that or Doctor Piper? A. Mr. Hay.

Q. How do you know? A. Mrs. Hay said so.

313 Q. You don't know as a matter of fact who paid for it? A. That wasn't my business, but Mrs. Hay would say often that she was going to get things.

Q. You don't know whether they were papered by Doctor Piper or Mr. Hay, or whether Mr. Hay paid for the furniture? A. I think Mr. Hay must have paid for them all because Dr. Piper didn't come until it was all ready for him.

Q. You don't know whether Doctor Piper paid his board when he came there or not? A. He didn't come to pay board—came as the family.

Q. How do you know that? A. Mrs. Hay used to say so.

Q. You don't know anything about it except what Mrs. Hay said? A. I asked her if she was going to take boarders, and she said no, they were to be like the family.

Q. You don't know of yourself anything about the arrangements between the Hays and the Pipers except what Mrs. Hay told you? A. No: no more than I heard them say. I used to hear her and Mother Piper talking about it, and she would say, "Florence, we will do so and so; we will get along nice and happy together and will have everything to go along well."

Q. When did you first hear Doctor Piper call Mr. Hay Son Edwin? A. When they came there on the visit?

Q. The first visit? A. On the first visit.

Q. How long was it after they came that he called him that? A. The first night they entered the door.

314 Q. The first night? A. Yes, sir; because we had supper all ready when they came in, and I remember that.

Q. When he was talking with Mr. Hay did he always address him as Son Edwin? A. Always, and Mother Piper the same.

Q. You never heard him speak to him except he called him Son Edwin? A. Never called him anything else, and when he was telling anybody else anything he would say this too.

Q. Was it true that at the time the Hays were living in the P Street house they had a great deal of company? A. They always have a great deal of company.

Q. People come over to stay over night or stay for a week? A. Not at that time, because after the Pipers came he didn't have room to accom-odate the company, so we had company to spend the evening and dine sometimes.

Q. Well, it was company that was callers, was it? A. Yes, sir; afternoon callers, and to lunch or meals.

Q. You didn't have people to come from out of town to stay any length of time? A. No.

Q. But company to come in and spend the evening and take dinner, perhaps, or play cards? A. Play cards; yes, sir.

Q. And that was the kind of visitors you had at P street? A. Yes, sir.

Q. That is one of the reasons you say why Doctor Piper said the house wasn't large enough; that he needed more room. Plenty room for Hay and his family and Doctor Piper, wasn't it?

315 A. Yes, sir; except the Doctor didn't have much room to make such light on his pictures as he wanted.

Q. Do you know whether Mrs. Hay was in favor of Doctor Piper's coming there when he did come? A. She didn't want any one, she said; she would rather be alone; she thought it was better to be alone in the house when she had children to raise.

Q. Was she opposed to it; was she hostile to it? A. Yes, sir.

Q. How did she express her opposition or hostility? A. She said she didn't think it would be right; she thought she would rather raise her children by themselves; but they just kept on pleading, and she didn't know what to do, and one day she said to me, "Hannah, I have got another letter from Mrs. Piper." She always said Mrs. and Mr. Piper when she spoke to me.

Q. She never called them Mother and Father Piper? A. No, sir.

Q. Who taught the children to call them grandma and grandpa? A. I did.

Q. You were told to teach them that? A. No one told me—no more than the old folks were called father and mother and son and daughter, and I thought it was proper for the children to use the same affection.

Q. Mrs. Piper, you say, was very kind, very affectionate? A. Very, indeed.

Q. Took care of the children? She was fond of them? A. Yes.

Q. Took care of them and had them with her? A. Yes, sir; she used to nurse them while I would go to meals.

316 Q. Took care of them a good deal? A. We didn't have but two that needed so much attention.

Q. And she was always fond of the children and was always taking care of them? A. Yes, sir.

Q. Was she in the habit of furnishing them with clothes, of giving them anything? A. No; never.

Q. Was he? A. No; not more than a box of paints or something like that, he would give the little boy. He was very fond of the little boy, Paul.

Q. You say that the furniture has all be- taken out of Doctor Piper's rooms? A. Yes, sir; the doctor that came there said he wanted it.

Q. You don't know anything about it, except you know that a man came there with the keys to his rooms and got his things? A. Yes, sir.

Q. And he took them all away? A. Took them all away from there.

Q. His furniture and all of his paintings? A. All of his paintings that were fit for anything; anything at all that was any good he carried off.

Q. Who was there when he took the things away? A. Why, Mr. Hay and Mrs. Hay.

Q. They knew about it? A. Oh, yes, sir.

Q. Is there anything left in the house belonging to Doctor Piper at all? A. Yes, sir.

317 Q. Where are they? A. In his room.

Q. What are they? A. He has got a folding bed there and a table and an organ and a couple of old rocking chairs, very old.

Q. You say you are now occupying those rooms? A. Yes, sir.

Q. Have been occupying them for the last two months? A. Yes, sir.

Q. Were they occupied or used by the Hays prior to that time? A. Never used them at all, any more than cleaned them up, and sometimes when I was airing them the children played over there in the front room.

Q. Didn't Mrs. Hay use it as a sewing-room? A. As I said, when I aired them she would have the sewing machine over there.

Q. You kept the sewing machine in that room? A. In that small room, and while I would be airing the other rooms I would

put the machine over there. That was the permission from his niece; she came on there and told Mrs. Hay she could occupy the rooms.

Q. When was that? A. Well, I don't know exactly when.

Q. Didn't you use it before that? A. They were never used until then. Why, the carpets in there were perfectly ruined. If we could have gotten in there, they would have been cared for just the same as if he had been there.

Q. Do you know how Doctor Piper came to go away from the Hays? A. He went away on a visit.

318 Q. Did you ever know of Mrs. Hay having any trouble with the Pipers? A. Never in my life.

Q. Did you ever hear her speak unkindly to them or get angry with them? A. Not to my knowledge.

Q. What sort of a woman is Mrs. Hay—a high-tempered woman? A. I have been with her for sixteen years, and I never saw nothing more of her than a perfect lady—nice as she could be.

Q. I don't suppose you associated with Dr. Piper and his wife in a social way? A. We would go in there and sit down and talk very often, and he would call us in and show us his paintings.

Q. By "call us in" you mean yourself and the children? A. Yes, sir.

Q. Doctor Piper was in the habit, you say, of sitting in his rooms in the evenings; didn't mingle with the family at all? A. He didn't bother about any one much. If anything was going on he would come down, but he would get weakened out and go back to his rooms.

Q. So far as he was concerned he spent the most of the time in his own rooms; didn't mingle much with the rest of the folks? A. He wasn't obliged to do so. Sometimes he did.

Q. How about Mrs. Piper? Did she usually stay with the Doctor? A. Yes, for such a length of time. She would go up and see that he was all fixed, and then she would go down in the parlor or over in the sitting-room.

319 Q. Towards the last of there being there, did you notice whether Mrs. Piper stayed more in her rooms than she was accustomed to do before? A. No; I never saw any change from the time they came in until they went away.

Q. Mr. Hay had company now as he used to have in the P Street house? A. Just the same.

Q. And always has when Doctor Piper was living with him? A. Yes, sir; always has.

Q. Has Mrs. Hay been sick since the Pipers have lived there for any great length of time? A. She was sick for seven weeks up in Frederick and when she came back she was sick.

Q. Prior to the Pipers coming there, was Mr. Hay punctual to his dinner or was he late, usually? A. He never had any particular time.

Q. It would depend upon his business at his office? A. Yes, sir.

Q. He would come if he wasn't detained, but otherwise he wasn't there? A. He would run right in. He said never wait for him.

Q. That was after the Pipers came; but before the Pipers came was Mr. Hay always there at 6.30? A. Never had any particular time.

Q. You had your dinner, of course, at 6.30 and you and the children and Mrs. Hay? A. Very often when nobody was there Mrs. Hay would give the children their dinner and she would wait for him.

Q. And the only change was that after the Pipers came there the dinner hour was at six instead of 6.30? A. Six sharp; yes.

320 Q. The body of Mrs. Piper was not brought to the house at all after her death? A. No, sir; because they didn't get in until that night. Mr. Hay went on for the body.

Q. It was kept by the undertaker? A. Yes, sir.

Q. And taken from the undertaker's establishment by the house out to the vault? A. It was taken out to Rock Creek; yes, sir.

Q. None of the Piper family were present at the funeral? A. None as I know of. I never knew anything of them all, except a lady on 16th street, Mrs. Brainard; she attended it.

Q. None of his blood relations were there. You don't know whether they were notified of the death or not? A. I don't know anything about that.

Redirect.

By Mr. HOEHLING:

Q. And never waited for Mr. Hay? A. Never.

Q. You say Mrs. Hay had hers before then? A. Yes, sir; when she was by herself—no one but her and the little boy; give him his meals and she would wait for him.

Q. You say that some little while ago a niece of Doctor Piper's came on here and gave permission to use this little room? A. She said the rooms could be opened and used.

Q. Which niece was that? A. I don't know any more than they said it was a niece.

321 Q. Did you ever see the lady? A. Not to know her. I don't know which niece it was.

Q. You say Mr. Hay went on to get the body? A. Yes; and brought it here. He was there some time before her death, I think; got there just before she died, and she was overjoyed to see him.

Q. Did he come back with the remains? A. Yes, sir.

Q. Did you ever see any of the relations of Doctor Piper or Mrs. Piper during the time they lived at the house? A. No more than a lady by the name of Mrs. Schouler. She and her husband was there.

Q. She was related to which one? A. That I cannot tell you; I don't know. Mother Piper came and asked me if she could have lunch for two friends of hers, and I said that she could certainly have it, and I went to Mrs. Hay and she directed me what I must get and what I must do, and then we had it ready at twelve sharp, and they were all down in the dining-room together.

Q. Mr. and Mrs. Schouler? A. Yes, sir.

Q. Doctor and Mrs. Piper and Mrs. Hay and one of the children; the others were out playing and didn't come in? —. ——.

Q. And you understood, then, that Mrs. Schouler was some relation to Mother Piper? A. Yes, sir.

Q. Did you ever hear Doctor Piper speak of any of his relations? A. Never heard him speak of any.

Q. Did you know he had any? A. Not from anything he said.

322 Q. Did you ever hear Mrs. Piper say anything about relations except this Mrs. Schouler? A. Not any except Mrs. Schouler.

her
HANNAH x FRANEY.
mark.

Subscribed and sworn to before me this 17th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Whereupon MAGGIE CLARKE, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name, please, and your residence. A. Maggie Clarke; #1512 Corcoran street, this city.

Q. You live with Mr. Hay, do you not? A. Yes, sir.

Q. How long have you been living with him? A. Since 1890.

Q. Was he living in the Corcoran Street house when you first went there? A. Yes, sir.

Q. How were you employed when you first went there? A. As a chambermaid.

323 Q. Who composed the family? A. Mr. Hay and Doctor and Mrs. Piper and Mrs. Hay and the three children.

Q. What were your duties when you first went there in doing housework? A. Waiting on the table and cleaning the rooms and doing anything they wanted me to do.

Q. Did you take care of the rooms that the Pipers occupied? A. Yes, sir.

Q. How many did they occupy? A. Two.

Q. Did you receive orders and directions from Doctor and Mrs. Piper as to what to do? A. Yes, sir.

Q. How long did you continue to do housework? A. Three years.

Q. By whom were you paid? A. Mr. Hay.

Q. Did Doctor or Mrs. Piper pay you any part of your wages? A. No, sir.

Q. Now, how were you employed after you ceased to do the housework? A. As cook.

Q. How was that house arranged; kitchen in the basement? A. In the basement.

Q. Is the dining-room in the basement? A. No, sir; upstairs.

Q. And from then on you were cook? A. Up until now.

324 Q. You are still cook? A. Yes, sir.

Q. Who had been cook before you took that place? A. Hannah.

Q. Wasn't there another girl who died? A. I don't remember her.

Q. That was probably before you went there? A. Before I went there, I guess.

Q. While you were cooking for the family I suppose you prepared all of the meals, did you not? A. Yes, sir; even when I was house girl I prepared the meals for Doctor and Mrs. Piper.

Q. What meals did you prepare for them? A. The breakfast, dinner, and lunch.

Q. You prepared all three of the meals? A. Yes, sir.

Q. Were they prepared by you separate from the meals for the other members of the family? A. Yes, sir.

Q. Why was that? A. Because they requested to have them different.

Q. Did they have different articles of food? A. Yes, sir.

Q. When you took the place of cook, did you prepare separate or different dishes for the Pipers? A. Yes, sir; until they left.

Q. Did Doctor Piper eat everything that the Hay family ate? A. No, sir; he didn't.

325 Q. Were there any particular dishes that you prepared for him? A. Yes; such things as rice, with raisons in it, and beefsteak cooked a certain way, and potatoes; he would not eat them mashed and he didn't touch veal.

Q. How about the time for having the meals? What time did you have to have them? A. He had breakfast at exactly eight, on the dot.

Q. And how about the lunch? A. 12 o'clock.

Q. And how about the dinner? A. Six.

Q. Were any special orders or directions given as to having the meals on time? A. For Doctor and Mrs. Piper it was.

Q. He was particular about that? A. If I was a minute late he would be downstairs after me.

Q. Finding fault with you if you were late? A. Yes, sir; if we were late.

Q. What do you know about the sending of the lunch to the rooms of Doctor and Mrs. Piper? A. Hannah always had to take it upstairs if he didn't come down.

Q. Did you prepare a separate lunch to be sent upstairs, separate from the rest? A. Yes, sir.

Q. Would you put it on separate plates or how would you fix it? A. On separate plates.

326 Q. While you were cook did you perform any other duties in the house excepting to cook? A. Yes; I used to do anything I was called on to do.

Q. Did you do any washing for the house? A. I washed for the beds, but not the body clothes.

Q. You washed the bedclothes, but not the personal clothes? A. Yes, sir.

Q. Did you do any work about the house while you were cook? A. Yes, sir; Doctor Piper always called on me.

Q. When he would call on you would you do things for him? A. Yes, sir.

Q. Did Doctor Piper seem to receive much attention from the people in the house? A. Yes, sir; I always thought they were son and daughter.

Q. Was he a man that required much waiting on or attention? A. Yes, sir; he was; he had a great many notions about him.

Q. What seemed to be the relations of all the family there together? Did they seem close and affectionate? A. Yes, sir; I always took it for father and son. I thought that for six months after I went there.

Q. You thought they were father and son? A. I didn't know any different for six months.

Q. How did Doctor Piper refer to Mr. Hay? A. Son Edwin.

Q. Did he seem to think a great deal of him? A. Yes,
327 indeed; they used to walk with their arms around each other.

Q. Was Mrs. Piper affectionate toward Mr. Hay? A. Very affectionate; yes, sir.

Q. What kind of a lady was she? A. Very nice lady.

Q. Did she seem to be happy there? A. Yes, sir; perfectly happy.

Q. Did Doctor Piper seem to be happy and contented? A. Yes, sir.

Q. Did the Pipers seem to be fond of the children of Mr. Hay? A. Very fond of the children, all of them.

Q. How did he refer to them in speaking to them? A. He used to call them his grandchildren; that is what I thought they were.

Q. Did you ever see the children show any rudeness or disrespect toward the Pipers? A. No, sir; sometimes if they were naughty he would tell them to stop and they would go away.

Q. Would they stop? A. Yes, sir.

Q. Are they well-behaved children in the house? A. Very well behaved in the house. I don't know what they are in the street.

Q. Do you remember when Doctor and Mrs. Piper went away from the city? A. In August.

Q. You remember the circumstances? A. Yes, sir; I went out to the door with Mrs. Piper and helped her in the carriage.

328 Q. Did either Mr. or Mrs. Piper tell you when they were coming back? A. They went away for a month, and while they were away Mrs. Piper was taken sick and never came back.

Q. Her body was brought back to the city? A. Yes, sir.

Q. Was it brought in the house? A. No, sir.

Q. Where was it taken? A. It was brought to the house, but not in.

Q. From there it was taken to the cemetery? A. Yes, sir.

Q. Did you go? A. Yes, sir.

Q. Was it put in a vault? A. Yes, sir.

Q. Did Doctor Piper come to Washington on that occasion? A. No, sir; he did not come.

Q. Who brought the remains? A. Mr. Hay brought the remains. He went after it.

Q. Did Doctor or Mrs. Piper tell you when they left the house that they didn't expect to return? A. No, sir; they went away with the intention of coming back, they told me.

Q. After Mrs. Piper died and was buried or put in the vault, were you at the house expecting Doctor Piper to come back? A. Yes, sir; I thought he was coming back.

Q. Were the rooms kept for him? A. Yes, sir; the rooms were kept locked up.

329 Q. How long did those rooms remain locked up? A. Far as I know, until last October.

Q. And what was the occasion of opening them then? A. Dr. Thomas came on here and opened them.

Q. Did he get anything out of the rooms? A. He took everything out that was any good.

Q. Take them away? A. Yes, sir.

Q. Were the rooms locked up again? A. Yes, sir.

Q. When were they next opened? A. This last October.

Q. Well, then, the first time was before that? A. Yes, sir; I meant before that.

Q. Then they were opened again last October? A. Yes, sir.

Q. Do you know the purpose? A. Mrs. Hay had some friends to come on.

Q. Did they clean up the rooms for them? A. Yes, sir.

Q. And they needed cleaning? A. The dust was an inch thick.

Q. They had been locked up all that time? A. Yes, sir.

Q. Did Mrs. Hay remain at home much in the evenings? A. Mrs. Hay went out but very little.

Q. Did she seem to spend much of her time with Mrs. Piper? A. Yes, sir.

Q. Did Mrs. Piper go out in the evenings? A. Sometimes they went out together, but the Doctor didn't allow her to go out much.

330 Q. Did Mrs. Piper go out much during the day? A. Sometimes they went downtown together.

Q. Did she go out with Mrs. Hay when she went out usually? A. Yes, sir; downtown together very often.

Q. Did you notice any change in the condition of affairs up to the time Doctor and Mrs. Piper went away? A. No, sir; I didn't notice any change at all.

Q. Was there any signs of any bad feelings? A. No, sir; not at all.

Q. Did they seem to be just as happy as usual? A. Yes, sir.

Q. Never was any change? A. No, sir.

Q. Did you ever hear the Doctor or Mrs. Piper speak of any of their relations? A. No, sir; never heard them speak of any of their relations at all. I have heard him say he had relations.

Q. But you never heard him say anything about his relations? A. No, sir.

Q. So far as you know, none of his relations ever called upon him at that place? A. A young lady called once to my knowledge.

Q. Do you remember her name? A. Miss Whitney, I think.

Q. Do you remember when that was? A. It was just before they went away to Saratoga.

Q. And you say she called upon them at that time? A. Yes, sir.

Q. How was that home kept while the Pipers were there?

331 Was it a comfortable home? A. Very comfortable; they always said it was.

Q. Seemed to be a nice home? A. Yes, sir.

Q. Did they live well? A. They lived happy; yes, sir.

Q. Kept a nice table? A. Yes, sir; very nice table.

Q. Who took care of the furnace? A. A man.

Q. Was the house well heated in the winter time? A. Yes, sir.

Q. Doctor Piper's rooms well heated? A. Yes, sir. He had an open grate besides the heat from the furnace.

Cross-examination.

By Mr. LEIGHTON:

Q. How old are you, Maggie? A. Twenty-five.

Q. Who was present at the time the Pipers left for Saratoga? A. Just Hannah and I.

Q. The Hays were not there? A. The Hays were there. They all left at once.

Q. The Hays left before the Pipers? A. They left the same morning.

Q. On the same train, at the same time? A. One went before the other. I think Mr. Hay went before the Pipers.

332 Q. You saw the Pipers into the carriage? They were there last, and you and the other girl? A. Yes, sir.

Q. The Doctor was usually particular about his food? A. Yes, sir.

Q. Was he in the habit of taking his meals with the rest of the family? A. Sometimes he would.

Q. Was it usual for him to? A. Yes; dinner at six, lunch at twelve, and eight for his breakfast.

Q. He usually had that in the dining-room, his dinner? A. Yes; his dinner and breakfast in the dining-room.

Q. His wife with him? A. Yes, sir.

Q. And his diet was very small; consisted of a little beef and rice? A. Particular things like those; yes, sir.

Q. Was he a hearty eater? A. No, sir.

Q. His food was plain and simple? A. Yes, sir.

Q. What did you do for the Pipers outside of taking care of their bed and sweeping and dusting the room, as is usual in houses of that character? Did you do anything outside of that? A. Anything they called on me to do.

Q. Did they call on you to do anything? A. Sometimes I would go errands for them.

Q. But usually your duties, so far as they were concerned, was confined to sweeping and dusting their room and making
333 up their bed? A. Yes.

Q. And you did that for the balance of the house? A. Yes, sir.

Q. And you attended to what Mrs. Hay wanted done outside of that? A. Yes, sir.

Q. This man that attended to the furnace did something else, of course? A. No.

Q. Worked around the house? A. No, sir.

Q. What did he do? A. That's all he did.

Q. He hired a man especially for that? A. Yes, sir.

Q. Did he do anything else? A. Sometimes he would go errands for Doctor Piper, or sweep the yard.

Q. Did he live there in the house and do nothing but take care of the furnace? A. When he was in the house he waited on the table.

Q. Didn't he work for somebody else also at the time? A. He did; he waited on Doctor Piper and did anything he called on him to do; he always did that.

Q. Doctor Piper paid him for that? A. No, sir; Mr. Hay paid him.

Q. Was that all he did? A. That's all he did.

Q. Didn't work for anybody else except Hay? A. No, sir.
334 Q. How long was he there? A. About a year.

Q. What year? A. I don't remember the year he was there.

Q. He didn't stay there summers, after the furnace was not going? A. No, sir; not in the summer.

Q. Only there in the winter? A. Yes, sir.

Q. And he was there one winter? A. Yes, sir.

Q. You don't know which winter that was? A. I don't remember; no, sir.

Q. Who went to the cemetery, outside of yourself, with the body of Mrs. Piper? A. Mr. and Mrs. Hay and Mr. and Mrs. Hay's father and mother and Hannah and myself.

Q. The children didn't go? A. The children all went; yes, sir. All of us went from the house.

Q. No one else; no friends of the Pipers? A. No friends of the Pipers, except what I have named.

Q. No services at the house or grave? A. I don't remember. There was a minister there, I think.

Q. You simply followed the hearse to the cemetery and the body was put in the vault and you came away? A. Yes, sir; I came home.

Q. You say since October that room has been occupied? A. Yes, sir.

Q. Occupied now? A. No, sir; not now.

335 Q. It has been opened and used by the family, when they wanted to use it, since last October? A. Yes, sir.

Q. Is this the young lady here that visited the Pipers (pointing to Miss Whitney)? A. I don't remember her face.

Q. You don't say it wasn't her? A. I don't say it wasn't or it was. I don't remember her face.

MAGGIE CLARKE.

Subscribed and sworn to before me this 17th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

Whereupon ALBERT S. BROWN, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. Please state your full name and place of residence. A. Albert S. Brown; Frederick, Maryland.

Q. And your occupation? A. I am a student.

Q. You are related, are you not, to Mrs. Hay? A. Mrs. Hay's brother.

Q. Mr. Brown, were you acquainted with Doctor Piper when he lived in this city? A. Yes, sir.

336 Q. When and where did you first meet him? A. I first met Doctor Piper when he visited my father's home in July, 1887—the Fourth of July, it was.

Q. Where was that? A. Frederick, Maryland.

Q. Was his wife with him? A. Yes, sir; they came with the Hays.

Q. Did they stop at your father's house? A. Yes, sir.

Q. How long did they remain? A. Several days, but I saw the Doctor very often afterwards. I came to Washington frequently on business, and I made my home always with Mrs. Hay.

Q. Do you know how long Dr. and Mrs. Piper had been living with the Hays prior to their visit to Frederick, in July, 1887? A. Not more than a couple of months; they came some time in the spring.

Q. After that you say you had occasion from time to time to come to Washington? A. I was in Washington very often. My business required my presence here, and I was in the habit of making my home with Mrs. Hay when I was here, and I would always see Doctor and Mrs. Piper. When the building of this house was under contemplation I went up to see him upon one occasion——

Q. What house was he in then? A. In the P Street house.

Q. Did you ever have any conversation with him about this new house? A. He told me about his plans; that they were

337 going to construct this new house on Corcoran street for Edwin and Florence; that they had adopted him; that he and Mrs. Piper expected to spend the balance of their days with them, and that this house that they were living in (that is, this P Street

house) was too small; they didn't have enough room; that the new house was to be built according to Edwin's and Florence's ideas; it was to be built for them and for their home, and he gave me to understand that he had no immediate relatives and no one who cared anything about him or Mrs. Piper, and that he and Mrs. Piper expected to live with them for the balance of their lives, and that in consideration of their care and kind treatment and the home that they would have with them, why, this property was to be theirs at his death.

Mr. LEIGHTON: Counsel for defendant objects to so much of the evidence of this witness as tends to make an oral contract conveying the title to the real property in controversy, as such contract is in violation of the statute of frauds in force in this District, and such contract, if made, would be void. I desire that this objection may apply to any similar evidence attempted to be given by this witness.

Q. What statement, if any, did he make to you with regard to the particular arrangement of the new house he was to build? A. This first statement that I mentioned was made while the house was under contemplation, before the lot was purchased. Afterwards I came here when the house was building, and at his invitation I walked over there with him, and he then explained to me about the advantages of it, what a nice home it would be for them all, and
that he had a great deal of light and air and plenty of room.
338 It was not built out on the line, so no one could obstruct that
light by building up close to them in the future. He told me about the lower floor having been planned so it could be thrown into one room, so that Edwin and Florence could have plenty of room in order to entertain their guests. He took me upstairs, and at that time he stated about the same to me in substance that he had at the first conversation; that he was to make that his home; asked my opinion about it, whether I didn't think it would be a nice home for them all, and that he expected to spend the balance of his days there, and that the survivor of them—that is, of himself and his wife—at their death would have it, that the property would then go to Edwin and Florence, as he termed them his children, he said; that in consideration of this care and affection that they were then bestowing upon him, and that he expected them to continue to bestow upon him, they were to have this.

Q. Do you remember when they left the P Street house and moved into the Corcoran Street house? A. I know about the time; it was some time in the summer of 1888; I think it was in August.

Q. They all moved into that house, did they not? A. Yes, sir.

Q. Did you visit them shortly after they had gotten settled? A. I have no means of knowing how often I was there, but it was quite frequently. Sometimes I was there twice a month, and then, again, I would not come again for sixty days.

Q. Whenever you did come you would go there to the house? A. Yes, sir; always made my home there.

Q. Would you sleep there and take your meals when you
339 had an opportunity? A. Yes, sir.

Q. You saw them all in their home life? A. Yes, sir; I always went upstairs when I was there and the Doctor was not downstairs to see the old gentleman. He was very fond of painting. He had quite a number of paintings—scenes in Rocky mountains and California—and he was also quite an expert microscopist. He was very entertaining, and I talked to him a great deal about that, but the house always came in for a part of the Doctor's conversation, and his conversation would generally be in substance what I have stated before.

Q. He was quite proud of the house, was he? A. Very proud of it; seemed to be very proud of Ned, and the children were all taught to call them grandpa and grandma, and, in fact, I myself called Mrs. Piper "Mother Piper." She was a very nice, pleasant old lady and I rather liked her; always addressed him as the "Doctor." Ned and Florence always spoke of Mrs. Piper as "Mother Piper," and, in fact, the whole household—my mother and father and all of us—looked upon them as a part of Ned's household and treated them accordingly.

Q. Did the relations existing in that household between the different members composing it seem to be happy and affectionate or otherwise? A. I never saw anything disagreeable at all; everything seemed to be very pleasant and agreeable when I was there.

Q. How did Mr. Hay and his wife treat Doctor Piper and his wife? A. Well, with a little more care and attention and deference than they would probably if they had been their own father and mother.

340 Q. Did they seem to consider and consult their wishes? A. At all times consulted their comfort, pleasure, and happiness, and seemed to want to refrain from doing anything that was calculated to make them at all uncomfortable or unhappy.

Q. Did they seem to defer to the Pipers at all? A. At all times; yes, sir.

Q. Did you ever hear Doctor Piper or his wife express any complaint of any kind in regard to matters at the house? A. No, sir; never did.

Q. Or any dissatisfaction? A. None that I know of. I never heard of any.

Q. Did these visits to the household continue from time to time up to the time when the Pipers left on the last occasion? A. Up to the very day or the day before they went away.

Q. Up to that time had you continued from time to time to have conversations with Dr. Piper? A. Yes, sir.

Q. And during any of these conversations up to the time he left did he ever express to you any change of purpose or intention in regard to the house or his arrangement with Mr. Hay? A. Never any word of that kind; on the contrary, just a week or so prior to his leaving he spoke of him in very affectionate terms, and that he was pleased with the home that he had and of their treatment of him; called them his children; spoke of him as Son Edwin to me

a number of times. Of course, in talking to me of Mrs. Hay, I being her brother, he called her Florence, but there was never any change that I could see.

341 Q. And that last talk, you say, was just prior to his going away? A. Yes, sir; just prior to his going away.

Q. Was it a cheerful and happy home or otherwise? A. It was a very cheerful, bright home. Mr. Hay himself is of the disposition to make a home bright and happy, and Mrs. Hay is alway agreeable.

Q. Did they all seem to be contented? A. Perfectly so; yes, sir.

Q. Seem to get along well together? A. Very much less jarring than I have seen in some families. The Doctor and Mrs. Piper came and went about the house just as they pleased. If there was company they were in the parlor until they were tired, and then they went upstairs just whenever they pleased and they did whatever they pleased.

Q. Did Doctor Piper and his wife go out in the evenings to any extent? A. I was not there often enough to know whether they went out or not. I know they were invited, whether they went or not.

Q. That time when you saw Doctor and Mrs. Piper prior to their leaving the city was the last time you ever saw her, was it not? She died while she was away? A. Yes, sir.

Q. Have you ever seen him since? A. No, sir.

342 Q. Were you here in the city when her remains were brought back? A. Yes, sir.

Q. Did you attend the funeral? A. No, sir; I was not in the city when she was buried. I was here the night the corpse arrived. Mrs. Hay and I went down to the station together.

Q. Who accompanied the remains? A. Mr. Hay.

Q. Dr. Piper did not? A. No, sir.

Q. You never have seen him since then? A. No, sir.

Q. Did the old folks seem to be fond of Mr. Hay's children? A. Seemed to be very fond of them all.

Q. Children seemed to be fond of the Pipers? A. Seemed to be very fond of them.

Cross examination.

By Mr. LEIGHTON:

Q. Of what are you a student, Mr. Brown? A. Of law.

Q. How long have you been studying law? A. Well, I have been seven or eight months at it.

Q. What was your occupation when you knew Doctor Piper in 1887? A. I was in the coal and wood and grain business in Frederick, Md.; manufacturing ice.

Q. And you had occasion to come to the city and would stop at the Hays' residence? A. Yes, sir.

343 Q. How frequently were you there when they lived at the P Street house? A. About the same number of times; about once a month.

Q. How long would you stay? A. Maybe longer than a day.
Q. You made it your home when you were here? A. Yes, sir.
Q. Slept there? A. Yes, sir.
Q. And never came except on business? A. Oh, perhaps once a year I would come down and spend a few days just for pleasure.
Q. The times that you saw the family, then, was at lunch or dinner and in the evening? A. Well, I was there during the day at times, but principally at meal time and in the evening.
Q. When you had this first conversation with the Doctor about his building this house, did he say he was going to build it so as to be large enough to accom-odate the needs of the two families? A. Yes, sir.
Q. Did he state to you how many rooms it was to contain? A. No, sir.
Q. Where it was to be built? A. No, sir; only in general terms.
Q. Commence the conversation himself? A. Voluntary information. He was not a man that you could question.
Q. Was Hay to furnish table board for himself and wife? A. Hay was to furnish everything that was necessary for a
344 home.
Q. Was he, the old gentleman, to pay for that? A. The old gentleman was not to pay for anything.
Q. He didn't tell you? A. He didn't say so to me. He said that Mr. Hay was to furnish the home, and that in consideration for the home he would have not only this property, but all the other property at his death.
Q. What was the value of his other property? A. I have no means of knowing that.
Q. He didn't tell you? A. No, sir.
Q. He didn't tell you whether Mr. Hay was to clothe him and his wife? A. He had intimated to me that this property was not one-third of his estate.
Q. You could not gather from anything that he told you whether Mr. Hay was to furnish him with his clothing? A. Ned was to furnish him with a home.
Q. What did he mean by that? A. He called it the loving care and attention that he had never had. He wanted somebody to care for him and be kind to him.
Q. Well, what was included within the word "home"? Did he mean that Hay was to furnish him with suitable clothing, with suitable servant hire, with suitable board for himself and his wife, or what? A. Clothing for himself and wife would hardly have been included in the matter of a home. Doctor Piper was to live with Mr. Hay just as his father and mother would have lived there.
If Mr. Hay's father's and mother's needs were such as would
345 necessitate it, he would have furnished them with clothing, but as Doctor Piper's means were such as did not necessitate such a thing, I don't suppose it was understood to be included; but if it had been necessary he would certainly have done so.
Q. Well, then, you think that if Doctor Piper had lost his property Hay would have maintained him as long as he lived? A. He

would have been obliged to maintain him, as he had promised, if the necessity had arisen, and he would have done so, as he had agreed to furnish them with a home for the balance of their days, and Mr. Hay would have felt bound by reason of this to furnish them with a home just exactly as if they had been his own rightful parents, and he always considered him as such, and he felt that way about it and expressed himself that way a number of times, and he, Dr. Piper, frequently stated to me that this house was built for Edwin and Florence in consideration for this care and attention and the home he was to have with them for the balance of his days.

Q. It was all to be furnished to him in the future? A. It was being furnished to him then, in the present, and the future as it had been in the past.

Q. Who was to furnish the house—I mean furnish the carpets and the furniture and the beds and the bedding? A. He didn't go into any details to me.

Q. You don't know anything about that part of it? A. No, sir.

Q. Did he say to you that in consideration of this that he was was going to do as he expressed to you, leave him this prop-
346 erty? A. Yes; in consideration of this care and affection and comfort and this home; he seemed to lay particular stress upon the affection and comfort, and stated that they were something money could not buy.

Q. How many rooms are there in that Corcoran Street house? A. I don't know.

Q. How many stories high is it? A. I think there are three stories.

Q. It is built especially for entertaining company? A. Not at all; it is built for a home. Only this ground floor is planned, so he explained to me, so that it could be thrown into one room.

Q. It was built to suit the convenience of Mr. Hay and his wife and the Pipers, the existing family? A. Yes, sir.

Q. You went with Mrs. Hay to meet the body of Mrs. Piper when it came back? A. Yes, sir.

Q. Where did you take it? A. I don't know.

Q. Was the undertaker there? A. Yes, sir.

Q. You don't know whether it was taken to the home of the Hays or to the undertaker's establishment? A. I don't know.

Q. You were not at that time stopping with the Hays? A. I was in the Pullman Car service, and I left after the body came into the depot for home, and the next day left for Boston, and I did not know what disposition had been made of the body until I returned.

347 Q. What did Doctor Piper say to you that lead you to believe that he had no near relations and no one who cared anything for him? A. He said so, in so many words.

Q. Said that he had no near relations? A. Told me that he had no near relations; none that cared anything for him or he cared anything about; that he never had a home, and that what he wanted was a comfortable home.

Redirect.

By Mr. HOEHLING:

Q. So far as you learned from conversation with him or with Mrs. Piper, had they ever had any children of their own? A. Never. He never spoke of any; in fact, I never heard them speak of any relations.

Q. Did you ever hear of any relations calling upon them while they were with the Hays? A. No, sir.

Q. I understand that in these conversations with Doctor Piper in reference to the disposition of his property that he referred not only to the Corcoran Street house, but to all his property? A. All his property.

Q. Outside from what you have already stated, did he state what it consisted of? A. I understood that Ned and Florence would stand in the same position as if they were his own children, and that they and their heirs were to have all of his property, everything. All of his statements were to that effect.

Recross-examination.

By Mr. LEIGHTON:

348 Q. Did he say Hay was to assume his name? A. No, sir; he called him Son Edwin. He never said anything about assuming the name.

Q. Was that his usual way of addressing him? A. I have heard him speak of him as Son Edwin. I have heard Mrs. Piper speak of him as Son Edwin. In speaking to me about Mrs. Hay, I being her brother, he usually called her simply Florence.

Redirect.

By Mr. HOEHLING:

Q. Were you at the house during the winter time? A. Frequently.

Q. How was that house heated? A. It was uncomfortably warm for me.

Q. What arrangements or provisions were made in Doctor Piper's rooms with reference to heating them? A. They had the usual register from the steam-heating apparatus, and then, beside that, there was a Franklin stove in there. Doctor Piper seemed to be a kind of salamander to me.

Q. Was he fond of having his room warm? A. He could stand more heat than anybody I ever saw. I recollect the first time I ever saw him—that was in Frederick, and he had on a pair of shoes that were lined with lamb's wool, with the wool on the inside. That was the Fourth of July, and very warm weather.

ALBERT S. BROWN.

Subscribed and sworn to before me this 17th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

349 FRIDAY, *May 7th*, 1897—2 o'clock p. m.

Met, pursuant to agreement, to continue the examination of witnesses on behalf of the complainant.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, counsel for the defendants.

Whereupon Col. WILLIAM A. COOK, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. State your full name, please. A. William A. Cook.

Q. And your residence? A. City of Washington, District of Columbia.

Q. You are an attorney by profession, I believe? A. Yes, sir; an attorney-at-law.

Q. How long have you been a member of the bar in this District? A. Since immediately after the war. I cannot remember the exact date.

Q. And you have been engaged in the general practice of law here ever since? A. I have.

Q. Are you acquainted with the complainant in this cause, Edwin B. Hay? A. I have known him for several years.

Q. One of the defendants in this cause is Doctor Richard U.
350 Piper. Will you please state if you know him? A. I was also acquainted with him in the city of Washington, and on several occasions he called at my office. I transacted some business for him.

Q. Did Doctor Piper ever call upon you in relation to the matter of preparing a will? A. He did.

Q. Can you recall about when that was—about what year? A. I cannot state just what year it was.

Q. Well, was it some time ago? A. Yes, sir.

Q. And on that occasion did he call alone or in company with any one; and, if so, who? A. He first called in company with Mr. Hay on one day, and the next day he called to see whether I had prepared the will which on the first day he requested to be prepared.

Q. Now, on the occasion of this visit, when he called in company with Mr. Hay, please state whether or not Dr. Piper, in the presence of Mr. Hay, gave you any directions in respect to the will which you were to prepare.

Mr. LEIGHTON: This question is objected to, as it is intended to disclose confidential conversations between client and attorney.

A. He did.

Mr. HOEHLING: Please state what the conversation was or the directions given by the Doctor.

Mr. LEIGHTON: Objected to for the reasons stated in foregoing objection.

A. He came up into my office, which was then on 6th street, and said that he desired to have a will prepared. He proceeded to state the property that he wished to embrace in the will, and gave
351 me particular directions to draw up the will, which I did accordingly. I told him that I could not have it ready on that first day, so the next day he returned and the will was prepared.

Q. In that conversation of the first day, in which he told you in detail what he wished embraced by the will and in the presence of Mr. Hay, please state what disposition he desired made of his property.

Mr. LEIGHTON: Question objected to because the conversation between client and attorney is not admissible.

A. He stated that he wished the will prepared so that it would vest the title absolutely in Mr. Hay. The will was accordingly prepared and signed by him.

Q. Did he communicate any reason or reasons to you in that conversation why he wanted the will so drawn? A. Several.

Q. Please state what they were.

Mr. LEIGHTON: Objected to for the reasons above stated.

A. He stated that Mr. Hay, as well as Mrs. Hay, had been peculiarly kind and good (to use his own expression) to him, and that he felt it was only his duty to make a proper return to Mr. Hay, and that he desired to vest the title to the property in Mr. Hay.

Q. In that conversation, did he make any reference to a house or lot on Corcoran street, in this city? A. Yes, sir.

Q. Did he state in that conversation that the house was then built? A. No, sir; he stated that the house belonging to Mr. Hay was not a sufficient house, and that he ought to have a better
352 and larger house, and he proposed to buy a lot, to which I have referred, and have a house erected on it suitable for Mr. Hay and for his own accommodation, and one that would exist absolutely in Mr. Hay when completed.

Q. I have understood you to say that all of these conversations about which you have just testified were had in the presence and hearing of Mr. Hay. Am I correct about it? A. The conversation was first had in the presence of Mr. Hay, and then, as a matter of precaution, I had Mr. Hay retire, and then stated to Doctor Piper that I wished to understand him perfectly, and requested him to repeat to me the directions before I proceeded to draw the will. The conversation that passed between Mr. Hay and the Doctor and myself was repeated almost exactly by the Doctor afterwards. It was first said in the presence of Mr. Hay, and then almost exactly the same in the absence of Mr. Hay.

Mr. LEIGHTON: This answer is objected to for the reason that it is a confidential conversation had between client and attorney, which he cannot disclose.

Mr. HOEHLING: Now, Mr. Cook, did you at that time prepare the

will in accordance with the wishes and the instructions given by Doctor Piper? A. In exact accordance with the instructions given, and as I read it to the Doctor on the next day.

Q. Was that will which was prepared by you ever signed by the Doctor and executed in the presence of witnesses? A. It was first signed by the Doctor and executed in the presence of witnesses.

Q. Do you recall the number of witnesses? A. My recollection is that there were three witnesses, inasmuch as it related to real estate.

353 Q. Were you or not one of the witnesses? A. That is my recollection of it; yes; and that Mr. Montgomery, who was then typewriter in my office, was also a witness. The third witness I do not now recollect.

Q. To whom was the will delivered after it had been signed and witnessed? A. My recollection is that I gave it to the Doctor after it was completely executed.

Q. You have not seen that will since, have you? A. I have not seen it since.

Q. When next did you see Doctor Piper and where, if at all? A. I saw him subsequently, after the building was completed and after Mr. Hay occupied the building.

Q. By "building" do you refer to the house on Corcoran St.? A. Yes, sir.

Q. Did you see them at that house? A. I saw the Doctor at that house and also saw Mr. Hay.

Q. Did you see the Doctor on that occasion professionally or otherwise? A. Not professionally, but socially I perhaps should say.

Q. On that occasion did you have any conversation with him there about the house and the disposition of the house? If so, please state what it was. A. He said he was exceedingly pleased with the disposition that he had made of the house in giving it to Mr. Hay; that he had no regret in doing so; that his comforts and enjoyments had been greater after the giving of the house and after it was occupied by Mr. Hay than his comforts and enjoy-

354 ments had been previously, and that if he had it to repeat he would make the same will and the same disposition of the property.

Q. At that time were Doctor Piper and Mr. Hay and their respective families together occupying that house? A. Yes, sir.

Q. Then the house at that time, I take it, had been completed? A. Yes, sir.

Q. Did you ever see Doctor Piper subsequent to that time that you have just spoken of? A. Once or twice, incidentally.

Q. At the house or elsewhere? A. Yes, sir; elsewhere. If my recollection is correct, he called at my office once to see how I was getting along, and I saw him once afterwards again at the house, in Mr. Hay's presence.

Q. Did the Doctor, on any of these subsequent occasions, ever communicate to you any change of purpose on his part in respect of that house or in respect of Mr. Hay?

Mr. LEIGHTON: Question objected to as immaterial.

A. He repeated the purpose that he had expressed previously and made the statement distinctly that he was greatly pleased with the fact that his means, pecuniary means, enabled him to do for Mr. Hay what he had done; that he deserved everything and more than he could give him.

Cross-examination.

By Mr. LEIGHTON:

Q. Col., I understand you to say that you were introduced
355 to Mr. Piper by Mr. Hay? A. Yes, sir.

Q. He brought him to your office? A. Yes, sir.

Q. For the purpose of making this will? A. That was the object, or, rather, to consult me in relation to it.

Q. That was the first time you saw him, you say, in respect to this will that was afterwards prepared by you and executed by Dr. Piper? A. That was the first time; that is when I became acquainted.

Q. That was the object of his introduction? A. That was the object of his introduction.

Q. Do you know whether at the time he signed the will he had acquired title to the Corcoran Street property? A. I don't think that he had, but he contemplated doing so.

Q. The property that he willed did not cover the Corcoran Street property, then? A. My recollection is that the will covered all the property that he owned in the District of Columbia at the time and the property that he proposed to erect a building on for Mr. Hay's use.

Q. You know the law in force in the District at that time did not permit a man to will after-acquired property. What date was it? A. I don't remember the date.

Q. And you are not able to state distinctly, then, whether it made any provision for the Corcoran Street property or not; you simply understood that it related to his property in the District of
356 Columbia? A. Yes, sir.

Q. Did he disclose to you the property held by him elsewhere, whether or not he had any elsewhere? A. Yes, sir; he disclosed the fact that he was the owner of property elsewhere, and also the owner of several thousands of dollars in one of the trust companies or safe deposits on the Avenue, in this city, out of which he proposed to buy the property on Corcoran street.

Q. Then at that time he hadn't purchased it? A. I can't say that he had not, because the exact date of the purchase I don't know; but he contemplated when he made the will to purchase the Corcoran Street property and vest the title absolutely in Mr. Hay.

Q. How soon afterwards did you next see him; how soon after the will was made? A. It was several weeks.

Q. During the same year? A. Same year.

Q. You never saw him again at his house? A. On one occasion,

I think I have stated, that I saw him subsequently at the house on Corcoran street, when Mr. Hay was in possession of the property.

Q. How long was that after the will was made, do you recall? A. No; I cannot tell exact dates, so I cannot say positively. I only remember the general fact, without reference to the exact dates.

Q. You say the Doctor called to see you at your office once again to see how you were getting along? A. Yes, sir.

357 Q. What do you mean by that—how your business was getting on or your health? Was there any degree of intimacy between you and Doctor Piper? A. There was some degree of friendship, which had sprung up in connection with the writing of the will and the pleasure that he expressed as to the method in which I had expressed his ideas in the will, and for that reason he called to see me, at least that was the reason he assigned, to see how I was getting along.

Q. Did he refer to your business or to your health? Were you well at that time? A. I presume that he referred to both at that time.

WILLIAM A. COOK.

Subscribed and sworn to before me this 17th day of May, A. D. 1897.

MARGARET MURRAY,
Examiner in Chancery.

TUESDAY, *May 11th*, 1897—10 o'clock a. m.

Met, pursuant to agreement, to continue the examination of witnesses on behalf of the complainant.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, Esq., counsel for the defendants, and the examiner.

358 Whereupon EDWIN B. HAY, the complainant in this cause, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. Please state your name, age, residence, and occupation. A. Edwin B. Hay; age, forty-seven years; residence, #1512 Corcoran street, Washington, D. C.; profession, attorney-at-law.

Q. How long have you been a member of the bar in this District? A. Twenty years.

Q. And you are still practicing? A. I am.

Q. You are the complainant in this cause, are you not? A. I am.

Q. Please state when and where and under what circumstances you first became acquainted with the defendant Richard U. Piper. A. In 1882 I went for the Department of Justice to Yankton, Dakota, to be there engaged in the land-script cases, and found already there upon my arrival Richard U. Piper, the defendant in this cause, who was associated with me in the same case on behalf of the Government. The case was quite a long one and we were together six weeks, and the attachment between Doctor Piper and myself became

at that time very great. I had not been there a week before his room was changed, so that we roomed together throughout the entire time. Upon the conclusion of the case and my return
359 to Washington I stopped by Chicago to call upon Mrs. Piper, the wife of the defendant, and spent a day with them. This was my first meeting and the circumstances of the association between Doctor Piper and myself.

Q. Did you stop off at Chicago to meet Mrs. Piper at his solicitation or upon your own desire to meet her? A. At the Doctor's solicitation, and, if I mistake not, I had sent a number of letters to Mrs. Piper during our stay at Yankton, which pleased the Doctor very much and brought very pleasant answers from her.

Q. When did you next see the Doctor, and where and under what circumstances? A. Our next meeting was in the early part of 1883, in Philadelphia, where the Doctor and myself were engaged in a case together during many weeks. Mrs. Piper was in Philadelphia at the time, and we were very often together.

Q. Upon the conclusion of that case in Philadelphia, where did Doctor and Mrs. Piper go, if you know? A. They came to Washington and visited me in my home here, at # 1535 P street, intending to spend a few days, but the visit extended over a period of six weeks. They did not wish to return to Chicago at all, and during that visit made propositions to remain always with us.

Q. At that time where was their home or place of residence? A. In Chicago.

Q. Do you know whether they had been keeping house there or not? Were they keeping house or boarding? A. They occupied a room in the home of Mrs. Adams, whose husband became one of the judges in Chicago, and took their meals at a boarding place two squares away, at the home of a Mrs. Walker.

360 Q. Had the Doctor and Mrs. Piper any children? A. They had not, as they informed me.

Q. Do you know whether they had any one living with them as a member of the family? A. They did not; they lived rather a secluded life—the Doctor and Mrs. Piper together.

Q. About what age was Mrs. Piper and also the Doctor at that time, as near as you can tell? A. Between sixty and seventy.

Q. Were they both in good health at that time? A. The Doctor seemed to complain very much; rather a hypochondria-. Mrs. Piper seemed to be in quite good health.

Q. Now, you stated that upon this last occasion to which you have referred, when Doctor and Mrs. Piper visited you in this city and remained some six weeks, that they did not wish to leave at all, but, on the contrary, desired to remain. Please state what was said on that subject by Doctor and Mrs. Piper, if anything. A. They seemed very much delighted with the home and the home life, and suggested that they would like very much to spend the balance of their days there with us; that they would be glad to treat us as their children, and that there would be nothing that they would not do to promote the interest of both of us if they were allowed to remain, and the Doctor himself suggested that if we

would consent to do so that he would be willing to build a larger house in which we could live together much better than in the house in which we were then residing; that if we would consent Mrs. Piper need not return to Chicago, but that he himself would go back and pack up the goods and chattels belonging to them there, and then return to live with us in Washington.

361 Q. Did you at that time consider the proposition he made? A. The proposition was not considered favorably at all, but, on the contrary, it was declined; and, as a further offset to the matter, we stated that it would be nice for them to come and board elsewhere, if they desired to live in Washington, and that then, as they seemed attached to us, they would be near us and we could be together more often than when they were so far away. This suggestion was not once made, but it was the constant subject of discourse whenever we would be talking about the home life in Washington.

Q. At that time who composed your family? A. Mrs. Hay and a baby boy.

Q. How large was the house in which you lived? A. Twenty feet front, fifty feet deep.

Q. And how many rooms? A. Five sleeping-rooms, with hall rooms, and parlor and the dining-room.

Q. How many stories? A. Three stories and a mansard.

Q. Did you own the house? A. I did.

Q. Did you at that time enlarge it or improve it? A. Not at that time; afterwards we did.

Q. Was that house at that time large enough for the convenient accom-odation of your family as it then existed? A. Sufficient in every way. We had in it two spare rooms and the hall rooms.

Q. How many servants did you have at that time? A. One servant.

Q. During that visit did the Doctor ever have any con-
362 versation with you in regard to any relations of his? A. He did; stated that he had brothers and a sister, but that the relationship between them was very much strained; that they did not care for him, nor did he care for them.

Q. Did he assign any reason as to why he desired to take up his residence with you, not related to him by blood, rather than his own relations?

Mr. LEIGHTON: Question objected to as immaterial.

A. He stated that both himself and his wife longed for love and affection and for some kind attention from somebody, and that they had become so much attached to my wife and myself that they felt that they would love to live during the balance of their days with us, and that if they were allowed to do so their cup of happiness would be complete.

Q. Now, in this conversation or these conversations in which Doctor Piper stated to you that he would build a larger house to accom-odate the two families if you would permit himself and his wife to make their home with you, what statement, if any, did he

make to you in respect to his means and property? A. He stated that he had some property in Chicago, and that he had also some cash deposited.

Q. Do you recall whether or not he told you the amount of that cash? A. He did not at that time, but he did in after communications, in writing, set forth fully the amount that he had and just exactly what he could do.

Q. Now, at the conclusion of this visit of the Pipers to your home, had any agreement been arrived at between yourself and
363 Doctor Piper with reference to making their place of abode with you? A. No; none whatever. All overtures looking toward such a thing had been most kindly and courteously declined, for the reason that Mrs. Hay and myself did not wish to break up the contentment and the happiness of a home in which a young married couple were living peacefully to themselves.

Q. How long had you been married at that time, Mr. Hay? A. About eight years.

Q. Where did the Doctor and his wife go after leaving your home on that occasion? A. The reason of the curtail of the visit at that time was because of the illness of Mrs. Hay's parents, she having to go to Frederick. The Doctor and his wife then returned to Chicago.

Q. Can you fix the time when they returned approximately? A. Yes; the last of May, 1883.

Q. Now, upon their return to Chicago, did you at any time receive from the Doctor and his wife letters? A. Oh, there were innumerable communications from Doctor and Mrs. Piper, the most of them being written by Mrs. Piper as the amanuensis of the Doctor. The letters would be from both of them and were written in the most affectionate language, and referring to us as their children.

Q. Please produce any of the correspondence that you may have which took place at that time in which they referred to you and your wife as their children. A. Prior to coming to our home upon the visit the Doctor himself, in a letter sent from Philadelphia under date of January 21st, 1883, speaking of a Mr. Ashhurst, an attorney, states:

364 "I felt really proud of you, and a little bit proud of myself, in the matter, wishing that I really had a right to call you my big boy, 'in deed and in truth.'"

Said letter is offered in evidence on behalf of the complainant and marked "Exhibit E. B. H. #1."

Mr. HAY: After their return to Chicago and under date of May 27th, 1883, I received a letter addressed "Dear Son Edwin and Daughter Florence," and closing with the words, "Do be careful Daughter Florence. As ever most affectionately, Father and Mother Piper." This was written by Mrs. Piper for both of them.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #2."

Mr. LEIGHTON: This letter is objected to, as it comes from Mrs. Piper and is immaterial so far as it affects the rights of the complainant.

Mr. HAY: After this date and throughout 1883, 1884, and 1885 there were very many communications filled still with affectionate language, some written by Doctor and some by Mrs. Piper for both of them, addressed to "Daughter Florence and Son Edwin," but in 1885—December 23rd—the Doctor himself sent a communication, written by himself, headed "My Dear Boy," and after referring to my recent sickness and the care that I should have, he states:

"I wish that we were in Washington to look after you a little—perhaps we could help you some in that direction. By the way, what do you think of our looking to your city as a residence for the few years still perhaps left to us? Suppose I, could command, say twenty-five thousand dollars certainly, and perhaps nearly as much more, what would you think of it? We have no relations or friends to whom we owe anything as to the final disposition of our property."

365 And closes with:

"Good night, with much love to you all son, daughter, grandchildren and all. R. U. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 3."

Mr. HAY: Following that communication was one of January 11, 1886, written by the Doctor himself, and addressed "Dear Son Ned."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 4."

Mr. HAY: Following this, on January 14, 1886, addressed "Darling Edwin and Florence" and containing these words:

"You will appreciate, dear ones, the estimation in which we hold you when I tell you that I have today written a will from the Dr.'s dictation, and with my full approval, in which we bequeath to you the whole of our property with the exception of a few legacies amounting to about five hundred dollars. This will is deposited with Judge Charles H. Wood, 126 La Salle street Oriental building, a fine noble gentleman, whom Edwin will like and one who will be glad to get him to attend to any business which he may have in Washington. In case of Dr.'s death Edwin and I are appointed executors of the Dr.'s will. In case of our death by accident on the journey, Edwin will attend to all business connected with all property left by us, which with the exception of the legacies goes to Edwin as above stated. He will of course find the will deposited as above said with Judge Wood, and with it, a schedule of property, and also a key to box in safety deposit vault of First national bank, containing property as set forth in schedule above noticed. Edwin will look after this matter as soon after our death as possible, as

there are some things in the papers with the will, which will need immediate attention.

As ever affectionately,

FATHER AND MOTHER PIPER."

"In case we are killed on our journey, going or returning, Edwin will find in connection with the will, what we would desire to have done with our remains."

There is an instruction in the letter which was crossed out, stating: "Please have our bodies laid somewhere in the vicinity of Washington."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 5."

366 Mr. HAY: Among other communications, one was received of date June 6th, 1886, and addressed "Dear Son Edwin and Daughter Florence." This letter was written after the trip to San Francisco, of which they speak in the previous letter, had been made, and in speaking of Doctor Piper, says:

"He has been very busy with a case which I wrote you about in my last, for this, which required an immense amount of work, he received $5,000; of course this is not to be mentioned to anybody but *our children*. The case was won."

Closing with:

"Good night from us both dear children, may Heaven's choicest blessing be showered upon you. As ever affectionately, Mother and Father Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 6."

Mr. HAY: On June 8th, two days after, another letter was written addressed to "Dear Son Edwin and Daughter Florence," in which the following appears:

"And now dear children I need not tell you how much we want to see you and the darling children." * * * "When we meet, which we shall do some time if nothing providential prevents, when I trust all can be arranged to the satisfaction of you our dear children and ourselves." * * * "Mr. Hyde to whom we introduced you, is an excellent man, knows nothing of the relation we bear to each other particularly, only of course we tell him as we do everybody that you and yours are very dear to us, and that we look upon you as our children, we did not enter into further particulars."

Closing with:

"We *both* send you oceans of love dear ones, let us hear soon, and believe us to be now and ever, on this side and the *other* if permitted, your affectionate, father and mother, R. U. and E. F. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 7."

Mr. HAY: Under date of August 3rd, 1886, received another letter headed "Dear Son Edwin and Daughter Florence," closing "Must close now dear children, with unmeasured love from both of us. Mother and Father Piper."

367 Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 8."

Mr. HAY: Under date of September 17th, 1886, a letter, in which is the following:

"We expect to start in a few days for Chicago, when if we reach there in safety we shall be obliged to remain for a few weeks to see to our affairs."

Referring to the Doctor's paintings, it says:

"How much I wish you could now see some of the beautiful views which the Dr. has been painting, but you will a little later if we live, and if we die they are yours. I trust we shall reach Chicago in safety, but if not, dear Edwin knows exactly what to do.

"That heaven may bless you I repeat, is the sincere and earnest prayer of your ever affectionate and loving, Father and Mother Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 9."

Mr. HAY: Under date of October 5th, 1886, a letter, in which is the following:

"We rejoice to hear that you are all well, and thank you again dear dear children for your loving words, which we well know come from your loving hearts; we fully appreciate them all, I cannot tell you in words how much." * * * "We shall be most happy to come to Washington, when it is convenient all round, more of that dear Edwin and Florence, if we reach Chicago in safety. Write us when you can, it is always a joyful event to us to receive your dear letters. We long to see you all, and if we live shall come when you are ready; in the meantime may heaven shower upon you and yours its choicest blessings. Dr. always reiterates *all I say*. I write *all* letters for him as that helps a little. As ever most affectionately, Father and Mother Piper." "We know you and Florence are truly happy in each other, dear Edwin, and that is one reason why we love you both so much. As ever affectionately, Mother and Father Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 10."

Mr. HAY: Another letter received, under date of November 7, 1886, in which is the following:

"DEAR SON EDWIN: The Dr. sends you the duplicate of a draft. The Dr. says: My legal friends here tell me that it would be evidence of property in the hands of an administrator in case of my death, and of course you would know how to collect it."

368 Upon the back of the letter there is the following endorsement:

"The draft is for $5,300, fifty-three hundred dollars. We have also with us, four trunks, containing clothes, and valise, microscope in box, and two valises."

The draft is upon the Bank of California, and is what is titled a duplicate of exchange to the Union National Bank of Chicago. This, as the letter states, was sent to me in case of loss of life or accident so that I could collect the money.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 11."

Mr. HAY: Following that, on November 19th, 1886, another letter was written, addressed "Dear Daughter and Son," and in which is the following:

"Dr. is anticipating great enjoyment from rides with Edwin, Jr., Now from Dr. He wishes me to say: We have now, in safety deposit vaults, twenty thousand dollars in cash, besides as you know the house built two years since which is worth ten thousand dollars. Dr. is anxious about investment and wishes you were here to consult him about it. Would you think it best to invest more here? Please write on receipt of this what you think of the matter, or is it best to wait until we come to W. and then invest? Please answer at once. As ever dear children, Father and Mother Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 12."

Mr. HAY: In the meantime there had been born to us a little girl, which we named after Mrs. Piper. A letter, written December 15th, 1886, addressed "Dear, Dear Children," contains the following:

"We are both much pleased with your kind thoughtfulness in naming the dear little one for us both, the Piper for Dr. and the Elizabeth for me." * * * "Would you both not rather call her Elizabeth Frances Piper Hay, you could then call the darling, Frances, rather than by, the perhaps old-fashioned name of Elizabeth."

Closing with:

"As ever affectionately, Father and Mother Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 13."

369 Mr. HOEHLING: Did you, in compliance with the request in that letter, name the baby Elizabeth Frances Piper Hay? A. We did. Following this was another letter written about January 1st, 1887, by the Doctor himself from Cleveland, where he was engaged in a case, containing the following:

"I send you and daughter Florence with this, a book which I think will please you—and send also a spoon for the new baby (Mrs. Piper's gift). I believe this is to be an annual present for 21 years to come, so if every spoon is different, there is a prospect of her having quite a variety of spoons.

"To Son Edwin and Daughter Florence."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 14."

Mr. HAY: A letter written upon January 17th, 1887, contains the following:

"Dr. has for several weeks called me grandma, and I am very proud of the title; I forget sometimes to call him grandpa, but shall soon become accustomed to doing so."

Closing with:

"As ever, affectionately, Father and Mother Piper, Grandpa and Grandma Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 15."

Mr. HAY: In the interim of these letters that were introduced in evidence there were many others pertaining to the matter of having them come to Washington, and finally Mrs. Hay and myself had sent the letter consenting to have it as they desired. Upon March 11, 1887, a few days before they came, a letter was written, addressed "My Dear Son Edwin," which contains:

"I feel however, that the Dr. must go somewhere before that time, and if it is not perfectly convenient for us to come to Washington at present, we will wait and take a short trip to Colorado or somewhere else. Now my dear son and daughter, tell us the exact truth with regard to this matter, as there *should surely be no hesitation in stating facts between us.* Our best love to darling Florence,
370 and the babies, and a large share from us both for yourself.
As ever affectionately, Father and Mother Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 16."

Mr. HAY: Upon March 18th, a few days afterwards, another letter was written, in which is the following, speaking of the Doctor:

"I felt very anxious about him, I am still; and as physicians and friends all insisted that a change was better for him than anything else, and he is so much attached to you all, that I ventured to press the matter to our children, so I am sure you will appreciate. If we live and Dr. is able, I think we will start for W. some time next week, today being Friday the 18th. I would not come now as you are situated did I not feel so anxious about the Dr., and I cannot get him started for any other place now, although he did think he would go to Colorado, but he dreads going among strangers.

As ever affectionately, Father and Mother Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 17."

Mr. HAY: On the 25th of March, 1887, Doctor and Mrs. Piper arrived at our home, # 1535 P street northwest.

Mr. HOEHLING: Under what conditions or arrangements did the Doctor and his wife come to your house at that time?

A. Pursuant to the conversations we had had and the communications that had passed between us prior to their arrival, they came

to live with us as a mother and father would come to live with children, and their dwelling with us was conditioned upon a covenant and agreement entered into that in consideration of permitting them to reside with us in this relationship during the balance of their lives and the services and care to be given to them that he would build a house in the city of Washington, District of Columbia, in which we should live together, and that at his death, not only the house, but all of his property should be willed to me——

Mr. LEIGHTON: Counsel for defendants asks if this covenant
371 or agreement is in writing.

Mr. HAY: No; it is not.

Mr. LEIGHTON: So much of this statement as relates to the giving of this property in controversy, together with his other property, is objected to because it is a contract having reference to and relation to an interest in real property, and in order to be valid must be in writing. It is mutually understood and agreed by counsel for complainant and counsel for defendant that this objection, without being repeated, shall apply to all statements relating to any contract or agreement with reference to real estate not in writing which may be offered by him as a witness.

Mr. HAY: And Doctor Piper further stated that should I be taken away that he would provide for Mrs. Hay and the children as if they were his grandchildren and she his daughter, and that should both of us be taken away during his lifetime that he would likewise provide for the children, and that he would rear and raise them, and upon this Mrs. Piper and Doctor Piper, Mrs. Hay and myself shook hands, and the Doctor himself called upon Heaven to witness the sincerity of the agreement.

Mr. HOEHLING: Was it a part of that or any other agreement that the Doctor and Mrs. Piper were to pay you anything by way of board for living at your house?

A. No; such a thing as board was absolutely never considered for a moment, nor, in fact, did the Doctor ever, for himself or his wife, pay one cent of money to me or Mrs. Hay for anything, but especially for board. Such was not the condition nor the agreement nor the understanding, as we were not breaking up our family and our family relations to take boarders, as there was no necessity to do such a thing.

372 Q. Was it any part of that agreement or of any other agreement that the Doctor, as a matter of fact, was to pay anything toward the wages of the servants in your home?

Mr. LEIGHTON: Question objected to as leading.

A. The Doctor paid nothing whatever toward the running expenses of my house in any way whatever or for anything, except, it occurs to me, at one time while we were away during a few weeks in the summer he asked if the hired manservant might return to wait upon him; and, if so, he would pay to him the sum of $10.00

per month. I don't know how much the Doctor paid, but it was not more than two months' wages.

Q. Now, prior to the arrival of the Doctor and his wife at your home on P street did you or not make any preparations for their reception or their accom-odation; and, if so, what? A. Realizing that this was to be a lifetime affair, and as all their written communications had proved that they had done so much for us, we wanted to make home as delightful and as pleasant as possible, therefore it necessitated the expenditure of considerable money in furnishing apartments for Doctor and Mrs. Piper, having the painting renewed, and the papering newly done, so as to make a homelike place for them, all of which necessarily incurred considerable expense.

Q. How many rooms did you provide for the Doctor and his wife at that P Street house? A. The Doctor occupied, for a sleeping-room, the first room in the third story, and, if I remember rightly, another room was devoted to his paintings; the Doctor spent much of his time with the brush. While this room, with the one that they occupied as a sleeping and living room, were
373 their apartments, still the parlor and the sitting-room and the whole house was considered as belonging to them as much as to us.

Q. Then these two rooms were their private apartments, for their exclusive use, as I understand it? A. For their exclusive use; yes.

Q. And were these the rooms that I understand you had prepared and fixed up? A. These were the rooms.

Q. What part of the furnishing of these two rooms, if any, did the Doctor supply? A. The Doctor did not furnish any part whatever.

Q. At that time, or immediately prior to their arrival in your home, who comprised the members of your family? A. My wife and two children, and a friend, Mrs. Kearfott; the cook and a nurse.

Q. You then had a nurse for the little child? A. Yes; the baby being there then.

Q. Now, between the time of the first visit of the Pipers to your home on P street and the time of their arrival to take up their permanent home with you, had you or not made any additions to the P Street house; and, if so, what? A. We had, at an expense of about $3,000.00, put up a bay window upon the front of the house, and erected a back building, which would give an additional and larger dining-room, a sleeping-room, and hall and bath-room, which took up the yard.

Q. Had these improvements or additions been completed at the time the Doctor and his wife arrived? A. I am under the impression that they had been completed.

374 Q. Now, was the house as it was improved sufficient to meet the needs of your family, as it then existed?

Mr. LEIGHTON: Question objected to as leading and immaterial.

A. The house as it was improved was entirely sufficient for the needs of my family, and gave us a very pleasant home in which to reside.

Q. I believe you are a member, and have been for a number of years, of various organizations in this city, are you not? A. I am, and have been for a number of years, officially and socially connected with a great many.

Q. Prior to the coming to this city of Doctor and Mrs. Piper to live permanently with you, had you and your wife, or not, been in the habit of spending evenings out to any extent? A. Very many, and entertaining company also.

Q. Were Doctor Piper and his wife fond of society; going around in the evening? A. The Doctor was not. He loved to entertain company at home, and to talk with them. Mrs. Piper was fond of going out and did go out with Mrs. Hay frequently, not very often at night because it was the rule of Doctor Piper, almost unalterable, that they should retire at nine o'clock. He complied with that himself, and insisted upon Mrs. Piper doing the same, always.

Q. Upon the arrival at your home of the Doctor and his wife, please state what the relations were between the two families, and in what way the Doctor and his wife were cared for and
375 treated by yourself and your wife. A. Doctor and Mrs. Piper were taken into our family just the same as if they had been our own father and mother; if anything, they were treated better than blood relations could possibly have been treated, as it was the constant desire of both Mrs. Hay and myself to make life as pleasant for them as it possibly could be under any circumstances, and so we put ourselves out in order to do so, notwithstanding that in prior communications they insisted that there should be no change in the relationship in our family and the family affairs.

Q. What change, if any, did the presence of the Doctor and his wife cause in your domestic and home relations, as they had existed theretofore? A. The daily care of their rooms, the additional preparation and provision of food, and the especial manner of cooking it necessary to satisfy the Doctor, he being exacting in this particular.

Q. Did the Doctor require a special diet, or in what do you mean he was exacting? A. There were certain meats that the Doctor did not eat, steak being the favorite meat for himself, and it having always to be provided for him; the cooking of a number of other dishes different from what we had been accustomed, entailing additional and extra labor upon the cook.

Q. Did you or not devote your evenings to the entertainment of the Doctor and his wife after their arrival?

Mr. LEIGHTON: Question objected to as leading and immaterial.

A. Everything was done for the pleasure of Doctor and Mrs. Piper. We were at home in the evenings, and brought in friends whom we thought would be congenial to the Doctor in his
376 peculiar tastes. Doctor Piper, being a universally well-read man, was ready to converse upon almost every subject.

Q. What had been his occupation? A. Originally he graduated

as a doctor of medicine and surgery, and in his early days was the author of a wonderful book in its time, titled "Piper's Surgery." Being an artist, he was the first among the etchers in our country, and this book contains upwards of eighteen hundred illustrations, produced entirely with his pen. This book was used during the war in the army. Since that time he has illustrated a book upon "Trees," and has done very much fine microscopic work, and so he became interested in everything that could come under it, and finally got into handwriting, the use of the camera lucida being his method of examination. Since that time he had lost all other occupations, except that of being an expert in handwriting, and also a microscopic for the examination of food and of blood, and has been engaged in many cases that are recorded in the books.

Q. How was the Doctor's health when he came to live with you in the P Street house? A. As the letters indicated, the Doctor did not seem to be well, but he has always been complaining.

Q. Did he or not require any particular attention on account of his health while you were living in the P Street house? A. He required constant and particular attention, so much so that a physician was called in regularly and constantly for the purpose of frequently looking the Doctor over, and he continued his attentions to Dr. Piper during the years that he was with us.

377 Q. Now, did or did not the Doctor and his wife seem contented after they took up their place of abode with you and at your home? A. They were perfectly contented and happy, and when a few weeks afterwards, to wit, in August, 1887, we were away at the seashore, many, many affectionate letters were written by them. The following is from one dated August 8th, 1887, speaking of the Doctor:

"He says, tell the dear children with much love that he rejoices in their happiness, and I assure you that he will do everything possible to promote it, and be assured I will second all his efforts."

Q. How was that signed? A. "As ever, affectionately, Father and Mother Piper." It is headed "Dear Daughter Florence and Son Edwin." It was written from # 1535 P street to Oak Bluffs, Mass. Shows the happiness in our devotion.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 18."

Q. When was the building of this Corcoran Street house first discussed? A. It was a brief time after the arrival of Doctor Piper that he insisted upon the purchase of the lot and the building of the house that they had been contemplating in the correspondence prior to his coming to Washington. It was the burden of his conversation from the time of his arrival. It was the instruction in the morning, when I left, to be sure and obtain the lot, and at night, when I returned, the question, "Have you done so?" Finally, after looking at a great many, the Doctor and myself going from place to place, we looked at the lot in Corcoran street, which the Doctor considered favorably because of its quiet situation, he wishing

to be away from the bustle and confusion of a thoroughfare.
378 He said also that if he could procure that that he could put more money into the house, and, as it was for us all to live in, he wished to make everything comfortable. So the lot was purchased, and immediately we commenced looking towards the plans for building the house, the original of which I drew and submitted to the Doctor before engaging the architect.

Q. Did he revise these sketches or plans that you had drawn?

Mr. LEIGHTON: Question objected to as immaterial.

A. He did not revise them, because they were drawn with a view of a satisfactory arrangement of the rooms, and he said that whatever Mrs. Hay wanted was satisfactory to him. It was to be a double house, arranged so that, besides the lower or living story, which was to contain the dining-room and the parlor and the sitting-room, on the second story the Doctor would have a front room, as well as ourselves.

Q. Who was the architect selected? A. Mr. A. B. Mullett. We introduced the Doctor and had him draw the plans for the building of the house. I introduced the builder also to the architect. He was not known to the architect prior to my introduction of him, and in the bids he succeeded in getting the contract, and then the house was commenced.

Q. Now, did you and the Doctor ever have any conversation with the architect while he was preparing the plans? A. We were daily in conference with the architect, the Doctor and myself together.

Q. What part, if any, did you take in the matter of making suggestions as to the arrangement of rooms? A. As I drew the
379 original plan for the arrangement of the rooms, so it was accepted by the architect, and the house was built accordingly.

Q. Did or did not the Doctor accept your idea? A. The Doctor accepted the idea and said that everything should be done to the satisfaction of Mrs. Hay.

Q. What was the particular arrangement set forth in your idea and also in the architect's plan in respect of the living apartments of the two families? A. It being a double house, with a hall through the center, the sitting-room, parlor, and the dining-room, as an assembly place for the whole family, were to be on the first floor. On the second floor it was arranged that upon the left of the hall, fronting north, the Doctor should have a sitting-room; back of that a sleeping-room and a bath-room, all of which were for their exclusive use, apart from the rest of the house.

Q. A private bath, was that? A. Private bath-room; yes.

Q. And was the house so built? A. The house was so built, in accordance with this desire and this plan.

Q. Did you have any spare or extra rooms in the P Street house after the Doctor and his wife took up their residence there? A. No; we did not; every available place in the P Street house was filled after the Doctor and Mrs. Piper came.

Q. Did you or not upon any occasion accompany the Doctor to

the office of Mr. William A. Cook, in this city; and, if you did, at whose request did you do so, and for what purpose? A.
380 Immediately after the purchase of the lots, which I purchased and paid for (the Doctor giving me the check for the same), and the completion of the plans and the breaking of the ground for the building of the house, the Doctor, then being faithful to his covenant, was as willing to make the will to devise this property to me and as eager to do so as he was to purchase the lot, and insisted upon going at once (saying that we did not know what might happen) to consult an attorney with a view to making a will to cover this and all of his property. We went together to consult William A. Cook, Esq., a well-known attorney in this city, and the Doctor and Mr. Cook and myself had an interview upon the subject of the preparation of a will. The Doctor had explained to Mrs. Hay and myself that the will would be much better than a deed, as, if the property remained in his name, that he could be of more service to "Edwin" by going upon his bond when needed, and then if any adverse circumstances should come to him (Edwin) that the property would be perfectly secure. We detailed the entire circumstances of our relationship to Mr. Cook, and set forth exactly what the Doctor desired, and upon this memorandum or details of a will Mr. Cook, as I am informed, made a will in accordance with our desire.

Q. Now, in that conversation that took place between yourself and Mr. Cook and Doctor Piper, what was the instruction given by Doctor Piper in respect to this Corcoran Street property? A. The Doctor had made a former will in Chicago, which was deposited with Mr. Wood (which we have mentioned and which is noted in a letter from Doctor Piper and was confirmed by him upon
381 his coming to Washington), but he stated that as he had acquired additional property in the District of Columbia since that time and wishing everything to be exactly right in the matter that he would make another will, so he instructed Mr. Cook, in my presence, to make a will, including this property in the District of Columbia, = 1512 Corcoran street and the lots upon which it stands, and all of his property wherever situated, especially naming that in Chicago, and devising all of the same to me, in trust for his wife, and at her death to belong to myself, my heirs and assigns forever.

Q. Subsequent to that interview between the three of you in respect to the making of that will, did or did not the Doctor at any time inform you that the will had been prepared? A. Doctor Piper informed me that the will had been prepared, and that he had gotten it from Mr. Cook and deposited it in the safe-deposit company on the Avenue.

Q. Did or did not Doctor Piper tell you that the will had been executed? A. He told me that the will had been executed and signed in the presence of three witnesses.

Q. Do you know where that will is? A. I do not. A Doctor Thomas got almost everything of Dr. Piper's of any value—papers, books, pictures, furniture, and everything—upon an order from the Doctor. I suppose he must have gotten this will also.

Q. Well, now, upon the completion of the plans for the erection of the house, was the work started at once? A. The work was immediately started and carried on to the entire satisfaction
382 of the Doctor, and while we were away during that summer each letter would speak of the house, as in August 9th, 1887, one was written, headed "Our Darling Florrie and Edwin," and contains the following:

"They are making mortar over at Corcoran street, and I do hope will go on rapidly with the house."

Signed: "Affectionately, Father and Mother Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 19."

Mr. HAY: August 11, 1887, another letter was written, addressed to "Our Darling Children, Florrie and Edwin," and contained the following:

"We go over to the house every morning; they are now beginning to lay the brick; "Little by little as the bird builds its nest."

Signed: "As ever affectionately, Father and Mother Piper."

Letter offered in evidence on behalf of the complainant and marked "Exhibit E. B. H. # 20."

Mr. HAY: On August 17, 1887, another letter, headed "Dear Children," and containing the following:

"Perhaps if we live by another year we can all take a cottage at Cottage City and take our meals out, so as to rest and enjoy ourselves" * * * "We go over to the house every day. With the fullest and truest love, Father and Mother Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 21."

Mr. HAY: Another, written August 21st, 1887, addressed "Darling Florrie and Edwin," and containing the following:

"The house is getting along I should think finely, bricked up to the first story, beginning to put in the nice bricks with the black morter. I think it will be a very nice house. Dr. says the work thus far is excellent, we go over to see it every day."

A portion of the letter marked "From Dr.'s dictation" contains the following:

383 "With regard to the house, everything seems to be going on favorably, the master mason said to me the other day, that he believed it was the best house he ever worked upon; I am over there every day and have as yet failed to see that everything is not well and thoroughly done. With much love and thankfulness for the relation which you bear to us, affectionately, Father Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 22."

Mr. HAY: August 28th, 1887, another letter, containing the following:

"We go over to the house every morning, everything is still going on well, Mr. Mullett, is, I believe, as does Dr. a very honest man."

"With true love and kisses, dear children, Father and Mother, E. F. and R. U. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 23."

Mr. HAY: So the work upon the house went on until in December when the frost and cold came, and the walls were then up and the roof on; so it was stopped until St. Patrick's day, when the work was begun again and the house was finished, so that we moved in on or about the first of August, 1888, and possession of the house was turned over to us by Doctor and Mrs. Piper, and myself and my wife have been in possession ever since.

Mr. HOEHLING: You spent the summer or a part of the summer away from this city in 1887? A. Part of the summer we were at Martha's Vineyard, Mass.

Q. Were you in the city during the summer of 1888? A. Mrs. Hay was during the entire summer of 1888. I don't remember whether I was or not. Prior to the completion of the house and while the Doctor was away in Cleveland, in a case, I received a letter written by himself, under date of January 19th, 1888, in which is this expression:

384 "You little know I think how good a letter from you seems to me though but a little way from you, and if I could or should put in words all the love I feel towards you and Flora and indeed, the children, I am afraid it would seem extravagant and perhaps unreal, and I must therefore be content to endeavor to show it in acts as time goes." "For Son Edwin."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 24."

Mr. HOEHLING: During the time the house was in the process of building, did you and the Doctor upon any occasions, from time to time, visit the building and inspect it as to its proceeding? A. The Doctor and myself are there together almost every day. The building of the house was the constant theme of conversation. Not only would Dr. Piper comment upon the builders and the method of building, but likewise upon the occupation of it together, anticipated by the Doctor and his wife. He felt proud of the fact, as he expressed it to me, and told anybody and everybody that he was building the house for "My Son Edwin," as he would speak of me, both in my presence and in conversation with others in my hearing.

Q. Did he or not in your presence, at that time, tell to others than yourself the fact of the relationship between you and himself and the purpose of his building that house? A. There was scarcely ever a time that anybody would visit him that he omitted it; he was always telling it, and Mrs. Piper, whenever she would go to call upon strangers, would always assert the relationship that "these are our children," and "we are to live with them always."

Q. Were any changes made in the plans of that house
385 during the time it was in process of erection, or was it built directly after the plans? A. Quite a number of changes were made; windows were bricked up, windows were put in, and many other changes were made from the design, and it was done at the request of Mrs. Hay. The Doctor always acceded to her wishes, as he said he wished to have everything as Mrs. Hay desired it, because the house was being built for us and it should be in accordance with our ideas.

Q. Now, upon the completion of that house on the first of August, 1888, you moved in, I presume? A. Yes, sir.

Q. Had you been living in the P Street house up to that time? A. We had been living in the P Street house, yes; and the Pipers had been living in that P Street house from March, 1887, to August, 1888, with us.

Q. How was the Corcoran Street house to be heated? A. It was originally intended to be heated by furnace; but as I had to furnish the coal to heat the house, and being approached by parties upon the subject of steam heat, stating it would be more economical (I knew it would be cleaner), therefore I thought that the investment of six or seven hundred dollars more than the contract called for, in putting in steam heat, would be a saving in the end; therefore the contract was changed from hot air to steam heat, and Chappelle & Company were given a contract to put in the same, and I paid the difference, amounting to $1,000.00, of which the Doctor gave me three hundred and some dollars.

Q. Did he ever furnish you with the balance? A. No; he never did.

Q. You paid that entirely? A. Yes, sir.

386 Q. What arrangement was made with reference to heating the Doctor's room in that Corcoran Street house? A. The house being finished in summer, it was impossible to make a test then of the heat, though they said that if we could heat it in summer up to a certain temperature, that of course it would be amply sufficient to keep it at 70 in zero weather. When the winter came the Doctor, needing more heat than any other individual in the family, thought that his room was not warm enough, and we had the contractors place there an extra-sized radiator, larger than those in any other part of the house. Then, the Doctor stating that he liked sometimes to see the blaze of the fire, he put in a Franklin stove for the purpose of additional heat in his room, and while he kept the temperature at 70 throughout the house (and it was a very large house to heat), the Doctor very seldom in his room had it less than 85 and sometimes to 100, until it was so warm that it was unbearable. He claimed that he was cold-blooded and needed more heat than others.

Q. Then did the Doctor seem satisfied with these extra means and sources of heat that he had in his room? A. They seemed to give entire satisfaction. Indeed, for any ordinary person, the original radiator was sufficient to heat the room and made it most comfortable, because there was one in his front room and one in the

back room, and his rooms were directly over the boilers, so that they were warmer than any other part of the house anyhow in consequence of that; but he was perfectly satisfied with the heat, and stated that the stove would allow him to see the blaze of the fire, which he liked to see.

387 Q. In what manner and from what source was the Corcoran Street house fitted up and furnished? A. It was furnished comfortably; not sumptuously, as I could not afford it. I furnished the house complete with the exception of the Doctor's sitting-room, which he furnished himself, with furniture that was brought from Chicago some months prior to our moving and stored in the neighborhood. In his sleeping-room a portion of the furniture was ours, with the exception of the bed.

Q. Did you or not transfer all the furniture and effects from the P Street house to the Corcoran Street house? A. We transferred everything to the Corcoran Street house, and paid about $1,200.00 additional for furniture. There were so many rooms, and the rooms were larger and necessitated the purchase of carpets and everything in keeping with the size of the house.

Q. And it cost you how much? A. At least $1,200.00.

Q. Who paid that? A. I paid that. I also paid for the putting in of the gas fixtures throughout the house, and also the mantels. An allowance was made to Doctor Piper for this afterwards, not in money, but in the passing of receipts.

Q. An allowance was made to Doctor Piper? A. To Doctor Piper.

Q. In what way do you mean? A. Just an allowance so as not to receive money from him, but to give to him that as a contribution on this house.

Q. I understand you paid for the putting in of the chandeliers and mantels? A. Yes, sir.

388 Q. And released Doctor Piper from reimbursing you that amount? A. Yes; that is right.

Q. But, as a matter of fact, he didn't reimburse you that amount? A. There was no money ever passed between us until Doctor Piper has been away from us.

Q. What was the amount that you paid for the putting in of the chandeliers in the Corcoran Street house? A. Between three and four hundred dollars.

Q. What was the style of the chandeliers? A. Not very elaborate.

Q. And what was the amount paid by you for the mantels in that house? A. I don't remember the exact amount. I suppose about $300. It seems to me about that amount. That included the tiling and the grates. I think I have given the Doctor receipts for those chandeliers and mantels.

Q. If you have given the Doctor such receipts, did or did not the Doctor pay you any money for those things? A. No; there was no money paid by him.

Q. The receipts were only in the nature of a release? A. That's it; yes.

Q. Mr. Hay, I call your attention to "Exhibit A," filed with the

deposition of the defendant Richard U. Piper in this case, which purports to be a receipt signed by you, dated August 1st, 1892, to Doctor Piper for $200.00 on account of money paid by you on the steam-heating apparatus in the Corcoran Street house. Please state the circumstances under which you gave that receipt, if you did give it, and also whether or not you received the $200.00.

389 A. I don't remember the circumstances under which it was given exactly, but it occurs to me that the Doctor did pay that amount of money, or about that amount, on the steam-heating apparatus.

Q. You have already stated that he paid you $200.00, or something like that, for the steam-heating. A. Yes; I think that is the only money that ever passed between Doctor Piper and myself.

Q. Now, there is another paper, marked "Exhibit B," in Doctor Piper's deposition, also purporting to be a receipt, signed by you, and dated August 1st, 1891, for "fifty dollars, balance due of four hundred and fifty dollars paid by me (that is, you) on mantels in home, # 1512 Corcoran street N. W., city, and one hundred and fifty on account of money paid by me (that is, you) on steam-heating apparatus in said house." A. That receipt was given the same way, just a year prior to the other. These receipts were given entirely as a release.

Q. Did you or not receive that money? A. No; I did not receive that money; the other amount, I think, was all right.

Q. In fitting up the Corcoran Street house with chandeliers, state whether or not you removed any chandeliers from the P Street house. A. I removed the crystal chandeliers from the P Street house to put in the parlor, the back parlor, and in the hall of the Corcoran Street house, and they are still there and have been in use ever since.

Q. But, in addition to this, as I understand you, you expended about $300.00 *it* fitting up the house with chandeliers? A.

390 Yes.

Q. In what way, if at all, did you replace in the P Street house the chandeliers you removed from there? A. I put inferior chandeliers there.

Q. At whose expense? A. At my expense.

Q. How many servants had you in your employ in the P Street house? A. Two.

Q. Upon moving into the Corcoran Street house, how many did you have in your employ? A. Four.

Q. In what way did you increase the number of your servants, and for what purpose? A. A dining-room servant and a man to take care of the steam heat.

Q. To what extent did that increase the wages paid by you to servants in maintaining your home? A. It increased the wages $250.00 a year.

Q. What part of that was contributed or paid by Doctor Piper? A. Not a cent. I may state here that, in fact, while Doctor Piper was with me he was never under one cent of expense whatever for anything.

Q. You say the item of wages to servants was increased about $250.00 per year? A. Yes, sir.

Q. About how many years, Mr. Hay, did this living together of Doctor Piper and yourself continue? A. Six years.

Q. About how much coal per annum did you consume in
391 the P Street house? A. About twelve tons.

Q. At what rate? A. $6.25 per ton; $6.00 for the coal and twenty-five cents for putting it away.

Q. That would be, at $6.25 per ton, $75.00 a year? A. Yes, sir.

Q. Did that include the heating and the kitchen coal? A. I am not sure of that.

Q. How much coal did it take to run the steam-heating apparatus and the kitchen range in the Corcoran Street house? A. About fifty tons a year.

Q. And at the same rate of $6.25 per ton that would be $312.50 per year? A. Yes, sir.

Q. That continued, I presume, during the six years you have spoken of? A. Yes, sir. My impression is that I never got this coal for less than $6.00 a ton, but it may have been some time $5.75.

Q. What was the water rent at your P Street house? A. $6.12.

Q. What was the water rent in the Corcoran Street house? A. $18.00.

Q. Did you pay that? A. Yes, sir.

Q. What was the amount of taxes paid on the Corcoran Street house? A. I paid the taxes from the time the house was built up to the present time, with the exception of the last half year's taxes. It was $200.00 a year.

392 Q. You paid those taxes? A. Yes, sir.

Q. Do you remember what amount you paid for taxes on your P Street house? A. About $60.00.

Q. Per year? A. Each year.

Q. About how much a year did you pay for gas in the P Street house? A. About $36.00 a year; average, $3.00 a month.

Q. About how much in the Corcoran Street house? A. $96.00 a year; average of $8.00 per month.

Q. Did you pay the gas bills? A. Oh, yes; I paid every expense of every nature and kind absolutely.

Q. How many rooms are there in the Corcoran Street house? A. There are fourteen, not including the hall-rooms, the attic, store-room, and the servants' rooms.

Q. I presume, Mr. Hay, that you pay the bills for the house? A. Always.

Q. Can you give us an idea of about how much your food and provisions cost you prior to the coming of Doctor and Mrs. Piper to live with you? I mean the articles of food. A. I cannot call to mind that without some thought upon the subject, because I have never been such a domestic fellow that I kept a memorandum of those things.

Q. Can you give us an idea of whether or not the expenditure was increased after their coming; and, if so, to what extent? A.
393 It was materially increased from $50 to $75 a month after Doctor and Mrs. Piper came.

Q. After you moved out of your P Street house, was it unoccupied or did you obtain a tenant for it? A. It was not occupied for about a year; then there came a tenant, and they resided there a couple of years, and then it was unoccupied again for a year.

Mr. LEIGHTON: Question is objected to as immaterial.

Mr. HOEHLING: And during that year that it was unoccupied I assume that you got nothing whatever out of that property? A. Nothing.

Q. Mr. Hay, prior to the coming to live with you of Doctor and Mrs. Piper, had you and your wife been in the habit of spending any of the summer out and away from the city of Washington? A. It was our custom to do so.

Q. How would you do about your home? Was it your custom to close up the house during your absence, before they came? A. We would close the house and keep a watchman to look after it.

Q. After the Doctor and his wife came to live with you, did you and your wife continue to spend parts of summers away from the city? A. Whenever we went away it was usually during the month of August, but we kept the house open the same as if we had been there.

Q. Did the Doctor and his wife go away? A. They never went away in the summer. They preferred to remain in the quiet
394 of the home rather than to go away with us, as they stated.

Q. So when you were away from home you kept the house open for them? A. Yes, sir.

Q. And you maintained the home for them? A. The same as if we were there.

Q. Supplied the provisions and everything of that kind?

Mr. LEIGHTON: Objected to as leading.

A. Everything.

Mr. HOEHLING: Now, how were the relations, Mr. Hay, existing in that Corcoran Street house between the various members of the two families? A. There was never any more affection existed in any family than existed in ours. The Doctor and Mrs. Piper often assured us that it was the first time that they had ever known real happiness in life. The children were good, kind, and considerate to Doctor and Mrs. Piper; called them grandma and grandpa, and Doctor and Mrs. Piper would always say, in speaking to Mrs. Hay and myself, "Son Edwin" and "Daughter Florence." It was our pleasure to do everything in the world to make life and home what it should be; and this relationship, even closer that could come between children and parents, existed constantly from the time they came until Doctor and Mrs. Piper left, when they went away on the visit to Saratoga.

Q. That was in 1892, I believe, wasn't it? A. August, 1892.

Q. What arrangements, if any, were made in relation to the
395 time of having meals at the Corcoran Street house? A. The meals hours were fixed to suit the Doctor—eight o'clock sharp for breakfast, lunch at twelve, and dinner at six. The Doctor

was exacting and particular about this, and, whether the rest of the family were at the table or not, at sharp eight he would be there for breakfast, sharp twelve he would have his lunch in his room, as he preferred it so, and exactly at six o'clock he would be seated at the table for dinner, and if dinner was delayed a minute after six he would complain of faintness; so, therefore, it was always the desire of every one to defer to the Doctor's wishes in the way of meals. When company came to dinner it was a little embarrassing, for if they were a little late it would not be considered at all by the Doctor; he would take his place at the table and start to eat, much to the embarrassment and dismay of Mrs. Hay and myself. He seemed to feel that it was his duty in life to be on the minute with everything. He was in that particular the most punctilious man I ever saw.

Q. You say his lunch was sent up to his room? A. Sent to his room, and the lunch for the family was prepared extra. The children coming in from school between twelve and twelve-thirty, they would have their lunch when they came, but Doctor Piper's lunch was sent upstairs, and it would be spread up there upon a table, with knives and forks and plates, and it was always just at twelve o'clock.

Q. Was that for Mrs. Piper and the Doctor? A. Yes.

Q. And that necessitated the preparation of two separate lunches, I presume? A. Yes, sir; always.

396 Q. I wish you would state, please, the disposition, temper-ment, and characteristics of Doctor Piper as he was at that time, when you were living together. A. Doctor Piper was of a most peculiar composition in his temper-ment. He had been humored in his every wish by his good wife during all the time he was with us, leading me to infer that such had been the case prior to his coming—bright in intellect, very set in his notions, very requiring of subserviency to him in every particular and by everybody, kind and affectionate and thoughtful of everybody more than of his own, so that Mrs. Piper was an absolute slave to him and his whims and desires. He was more kind to the veriest stranger in a financial way than he was to those around and about him. His idea of "respect the burden" was something that seemed to give him infinite delight, and oftentimes where he would begrudge a contribution for the church to his wife I have seen him give to the porter on a train one or two dollars. He was the most generous man in the world to himself; therefore, if he was ever crossed in these things it would arouse him to some little ire, but with myself the Doctor never uttered in all of our relationship, from 1882, so much as an unkind word, nor did he ever give vent to such regarding me in my presence, except when he — in this case in Newport about a month ago. I think his affection for me was absolutely perfect and his regard for me such as words cannot describe. I believe in this I have given the temper-ment of Doctor Piper as honestly and as justly as is possible.

Q. In what way, Mr. Hay, were these meals taken up to Doctor Piper's room which he had at the noon hour? A. I think the

nurse, Hannah, with the cook, prepared and arranged this, and they were carried up upon a tray. There was a table up there, which was spread and everything provided for it, such as table linen
397 and china, and after the meal was finished it was cleared away.

Q. How did the Doctor and his wife spend their time during the day? A. The Doctor generally painted or Mrs. Piper would read to him. They would take a walk sometimes or take a ride, and at night, after dinner, we were all in the parlor to enjoy music and the little incidents of the day, and Mrs. Piper would alternate that with reading to the Doctor up in his room.

Q. Mr. Hay, aside from the arrangement that you have stated existed between you and the Doctor in relation to the Corcoran Street house, did or did not the Doctor display generosity to yourself and to any of the members of the family? A. No; there was never any evidence of generosity on the part of the Doctor toward any of the family or myself at any time during his living with us.

Q. Did he or not during that period make presents to your children? A. No; it was not the Doctor's custom to make presents; in fact, from a philosophical standpoint, he was opposed to it, and so expressed himself, stating that he thought the giving of presents, especially to children, was wrong, because it looked as if it was buying affection.

Q. From your observations and association with the Doctor, would you consider him a man that was liberal with his means or a man that was the reverse? A. The Doctor was not in any way liberal with his money; therefore just the reverse. He was solicitous to the fullest extent of his own desires, and no matter what might be the cost he would never stint himself.

398 Q. Can you state any exhibitions or illustrations of that—that is, the gratification of desires of his own? A. He purchased great, easy chairs for himself at a very large expense. He purchased expensive shoes, likewise clothing beyond the ordinary price, for himself. He expended much in books and in canvass for paintings and frames for pictures, while to Mrs. Piper he denied any more than an ordinary expenditure for her needs and comforts, though, of course, with regard to the house and household comforts and living and all that, both of them were well and bountifully supplied.

Q. Was this gratification of personal comfort manifested by him in any way in connection with the table, in his food; and, if so, what? A. The Doctor would have special dishes of his own brought upon the table, in the particular of fruit out of season, and it was never the custom of the Doctor to share the same with other than himself. That never personally worried me, though to a good housekeeper, as was Mrs. Hay, it was sometimes most embarrassing, especially when strangers were at the table.

Q. In what way were the Doctor and his wife treated during this period by Mrs. Hay and with what consideration? A. As kindly as possible. Mrs. Hay realized the situation. It took her two years or more to consent to this relation, and in that time she had an op-

portunity to review the entire change which would come in our lives by taking two old people to live with us always; but when she did consent to do so, then she was the true and noble wife and the affectionate daughter. There were never any disagreements whatever between herself and Mrs. Piper, and if at any time there
399 were any little matters or whenever an argument would arise it was generally between the Doctor and herself.

Q. Doctor Piper and Mrs. Piper? A. The Doctor and Mrs. Hay.

Q. From your observation, did the Doctor seem to be fond of Mrs. Hay or otherwise? A. The Doctor was very fond of Mrs. Hay. In fact, he has expressed it time and time again and has always expressed it in his own writings since he has been away from us.

Q. Now, about when was it, Mr. Hay, that the Doctor and his wife left the city, as it turned out, never to come back? A. The Doctor and his wife went from the city on the 26th of August, 1892. They left to visit Saratoga, presumably, on account of the Doctor's health.

Q. What was the condition of the Doctor's health at that time? A. Well, as usual, the Doctor was complaining; always imagined ailments which possibly did not exist, but, of course, as he was humored in this by Mrs. Piper, everything was done to make it most pleasant for him under all circumstances. He thought that the waters at Saratoga would do him good, and they went on that account.

Q. How long did they contemplate remaining there at that time, if you know? A. They intended to stay a few weeks at Saratoga and then return. They had been to Saratoga once before.

Q. Were you and Mrs. Hay at home when they went away? A. We were at home when they went away. Mrs. Hay left on one train and they left on the other. I saw them both off.

400 Q. You remained in the city? A. I remained in the city. The parting was affectionate and sincere, both with myself and Mrs. Hay.

Q. You say you accompanied them both to the depot? A. I accompanied them both to the depot; saw Mrs. Hay off and saw Doctor and Mrs. Piper off.

Q. They left on different trains? A. They left on different trains. They were going to different places. Mrs. Hay was going by the way of Harrisburg and they were going by the way of New York.

Q. Did the Pipers go to Saratoga direct? A. It is my impression that they went direct to Saratoga.

Q. Now, during the intervening time between January 19, 1888 (the date when you say a letter was written by the Doctor to you from Cleveland), and the time of their departure, in August, 1892, for Saratoga, had there been any other correspondence between the Doctor and yourself? A. There had been a great deal of correspondence whenever any of us were absent.

Q. What was the character, without going into detail, of those letters? A. Just as full of love and affection as it was possible for letters to be.

Q. Was the address and the conclusion like the former ones? A.

Always "Daughter Florence and Son Edwin," and signed "Affectionately, Father and Mother Piper." There was never any change, not even after the Doctor had gone away and been away two or three years.

Q. After the time spent at Saratoga did the Doctor recover
401 from his ailments? A. The Doctor seemed not to get any better than he was when he went away. From the letters we received it appeared that the Doctor was improving today and down tomorrow. This necessitated the continued attention of Mrs. Piper upon him from morning to night, which finally broke her down.

Q. Have you any letters which you received from them while they were at Saratoga? A. Oh, yes; many of them. We have all of the letters from Saratoga from the time they reached there until I was called to come, during the illness of Mrs. Piper. For some time after they went to Saratoga the letters were written by Mrs. Piper and the Doctor almost every day, until finally Mrs. Piper was taken sick and the Doctor became very much worried. We were interested in the collection of a claim against the Sharon estate, and his mind ran very much toward that money. The last letter ever written by Mrs. Piper was dated November 20th, 1892, in which she complains that her handwriting is not as good as usual, because of her feebleness; but the Doctor, upon November 30th, wrote a letter in which he speaks of the claim against the Sharons and says, in conclusion:

"If we do not get well and strong, we shall of course expect you to come on and help us in going home. With much love, Father Piper. Son Edwin." "Please notify us whenever you expect to be absent for any length of time, so you would get our telegram."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #25."

Mr. HAY: On December 2, 1892, he wrote another letter, in which he says:

402 "Would it not pay you to come on here in regard to the Sharon money? Could Mrs. Piper make a will—it is in her name as you know, or could we not give you a power of attorney to collect, in case of the death of both of us, or could, not some form of agreement be entered into this end? Keep this quiet as a pure business matter."

The envelope is marked "Confidential."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #26."

Mr. HAY: The Doctor sent for me to come to Saratoga on December 4th, 1897.

Mr. HOEHLING: How was that communicated to you? A. In a telegram, which is as follows:

"Come as soon as you can. Answer. R. U. Piper."

Telegram offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #27."

Q. Did you go, Mr. Hay? A. I went and found Mother Piper very ill; she was glad to see me; they were in one room. The Doctor was very much worried about her. I went immediately and got a trained nurse and put her in charge, and, after remaining a day or so, I left for home, after instructing the nurse to telegraph me every day as to the condition of Mrs. Piper. This she did at my expense.

Q. At whose expense did you make the visit to Saratoga and return? A. I made five trips at my own expense.

Q. Have you ever been reimbursed? A. I have never been reimbursed.

Q. Now, upon the occasion of your first visit to Saratoga, you say Mrs. Piper was quite ill? A. Yes; after my return, about a day or so, on December 14, 1892, the Doctor wrote another letter,
403 which is a statement of the account against the Sharon estate and in which is the following:

"And now Ned collect this at once as I know you can, you have such moral power in such cases; I did propose to make a separate disposition of this paper but will do so under the conditions. With much love, R. U. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #28."

Mr. HAY: On December 16, 1892, the Doctor writes a letter, in which is the following:

"I am trying to do what as you know my darling and as I now think (dying) wife, used to do for me."

It contains another account of the Sharon matter and requests that $3,000.00 be placed in the Central national bank to his credit, as he states:

"I should like to feel that I had $3,000, shall not want it long anyhow."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #29."

Mr. HAY: On December 22, 1892, another letter written by the Doctor himself, addressed "My Dear Son Edwin" and signed "With much love to all, Father Piper," in which he states:

"As to wife, I have given up all hope some days since. The Dr. and nurse, they have seen others get well who were lower than she."—"You speak of Florence coming here—all good and loving and kind as the offer is and for which we can only thank you most heartily, it cannot be. There is not a single spare sleeping room in the whole house, the Summer rooms being dismantled as the custom in the smaller houses here." "And indeed if this were not the fact, she could not handle her, Mrs. Piper at all, as Miss Johnson strong as she is, is glad to call help when she can get it."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #30."

Mr. HOEHLING: Referring, Mr. Hay, to that statement in that

letter by the Doctor about Mrs. Hay going to Saratoga to
404 nurse Mrs. Piper, had Mrs. Hay volunteered to go? A. Mrs. Hay had volunteered to go—wanted to go.

Q. And for what purpose? A. For the purpose of nursing Mrs. Piper.

Q. Do you know, Mr. Hay, whether or not Mrs. Piper at the time she was ill at Saratoga made and executed a will? And, if so, please state the source of your knowledge on that subject.

Mr. LEIGHTON: Question objected to as immaterial and irrelevant.

A. I don't know whether Mrs. Piper made a will at Saratoga, but Doctor Piper himself made a will on the 28th day of November, 1892, prior to my going there the second time. Mrs. Piper made a will prior to leaving Washington, before she went to Saratoga, on the night of August 25th, 1892.

Q. Now, what will is it that you refer to as having been made by the Doctor at Saratoga? A. While I was there the Doctor stated to me that he had made a will bequeathing to his wife his property, but now that she was passing away, that he wanted to change it, and he made a will on the 6th day of December, 1892, sitting beside his wife, who, as the Doctor said, was passing away. It was properly executed in the presence of Doctor and Mrs. Piper and the will was left with the Doctor.

Q. By whom and whose dictation was that will prepared? A. At the Doctor's dictation; I was amanuensis.

Q. Was that will executed in the presence of three witnesses? A. Three witnesses signed it with Doctor Piper.

Q. What disposition, if any, did the Doctor in that will make of the residence on Corcoran street?

405 Mr. LEIGHTON: Question objected to; the will is the best evidence of its contents.

A. The Doctor devised to me, to my heirs and assigns forever, the property in Corcoran street, city of Washington, District of Columbia, and the property in Chicago, and all of his property with the exception of a few small bequests.

Q. That was made on what date? A. December 6th, 1892.

Q. What was done with that will, Mr. Hay, after it was prepared and executed, as you state? A. It was given to Doctor Piper.

Q. And upon your return to Washington, was it, so far as you know, still in his possession? A. Yes, sir; still in his possession.

Q. Now, when did Mrs. Piper die? A. The 3rd of January, 1893.

Q. Now, between the 22nd of December, 1892, and the date of the last letter you testified about, and the 3rd of January, had you been to Saratoga? A. I was not there between those two dates.

Q. And in what way was the fact of Mrs. Piper's death communicated to you, if at all? A. Mr. G. S. Hine, proprietor of the hotel, telegraphed, asking me to come to Saratoga, that Mrs. Piper was dying.

Q. Have you that telegram? A. I may have it; if I have I will put it in.

Q. The first visit you made, Mr. Hay, to Saratoga, was in pursuance of a telegram which you received from Doctor Piper, which telegram has been introduced as an exhibit? A. Yes, sir.

406 Q. Now, under what circumstances or at whose instance did you go the second time to Saratoga? A. Because of the illness of Mrs. Piper.

Q. Were you telegraphed for on that second occasion or did you simply go, knowing her condition? A. I think the nurse sent for me.

Q. Now, upon being notified by Mr. Hine of the condition of Mrs. Piper, did you leave for Saratoga? A. Immediately.

Q. How long did she live after you arrived there? A. She died before I reached there.

Q. She died on January 3, 1893? A. Yes, sir.

Q. In what condition did you find the Doctor when you got there? A. Perfectly wild.

Q. What arrangements, if any, had been made by the Doctor when you arrived in relation to the removal of the remains of his wife? A. Nothing whatever. I made all the arrangements. I arranged for the funeral service and for the undertaker and for the train service and the return to Washington with the remains.

Q. Were any funeral services held over the remains of Mrs. Piper at Saratoga? A. The funeral services were held at Saratoga at seven o'clock the evening before we were to start for Washington the next morning.

Q. By whom were those services conducted? A. An Episcopal minister.

407 Q. Was Mrs. Piper a member of the Episcopal church during her lifetime? A. She used to attend the Episcopal church.

Q. Did you accompany the remains from Saratoga? A. I did. We arranged the morning following the services that we should start upon the train leaving at 8.10 a. m. We were aroused at six o'clock, and I went up to the Doctor's room to have him come, but he was not out of bed, and said that he would not come and could not come, and that nobody could change him from this decision. He wanted us to remain over another day, and then he would come. I told him that all the funeral arrangements were made in Washington for the services and the placing of the remains in the vault, and that the friends had been notified who were to attend, and that we could not remain longer than that day. When the undertaker's assistants came to carry the remains to the hearse he forbid them to do so, not personally, but by a word from the nurse brought to them from him that he would not allow the corpse to be moved. I could do absolutely nothing with him, and as the time approached to proceed to the station I had to leave him, but he put about him the nurse, to allow no one to have any communication with him except the Doctor and those in the house to carry him food, and with the remains I reached Washington, the train being late, be-

tween ten and twelve o'clock that night, and the services were announced in the "public press" to occur at the vault in Rock Creek cemetery.

Q. By whom was that announcement made? A. I had it put in.

408 Q. Upon the arrival of the remains of Mrs. Piper in this city where were they taken? A. They were taken by the undertaker to his establishment.

Q. And from there? A. From there to our home, where the hearse was joined by the carriages containing the friends, who accompanied the remains to Rock Creek cemetery. The services at the cemetery, I think, were held by Rev. Dr. Harding, of St. Paul's church.

Q. And the remains were deposited where? A. In a vault at Rock Creek cemetery, as requested by her while I was at Saratoga, and likewise in the former writings.

Q. Are her remains still in that vault? A. They are not there. They were surreptitiously taken away from Washington by one G. S. Thomas. There are in Chicago, and it was some weeks after that we learned of the removal.

Q. Are the remains buried in Chicago, so far as you know? A. I understand that they are.

Q. Now, upon leaving Saratoga I understood you to say that the Doctor was in a wild condition? A. Seemed to be so.

Q. Brought about, I take it, by the death of his wife? A. By the death of his wife and by an overinjection of morphia, as I understood. I don't know that, but that is what they told me. He was very much disturbed at the loss of Mrs. Piper, though they did not seem to be the burden of his thoughts; it was "money, money, money," and that he was being robbed.

Q. Did you consider him in a rational or sound state of
409 mind at that time? A. When he was with me and quiet he seemed to be rational enough; but he would state to me hallucinations, as of somebody shaking paper over the door and putting notes under the door; things that never occurred. He kept a revolver under his pillow, which the nurse had to take away. I left him to bring the remains of Mrs. Piper to Washington, and then I returned again to Saratoga to see whether or not he would come home with me.

Q. About what date was it that you returned to Saratoga? A. In about a week; but I found that he would not come, as the physicians there persisted in telling him that he was not well enough to travel. This struck me as a scheme on the part of attending physicians, as they were making three visits a day, and at $2.00 a visit that was quite a big thing at Saratoga. I went again to assist him home, and found in Saratoga one G. S. Thomas, of Chicago. When the Doctor (Piper) found that he was there, he wanted me to prevent him from coming into his presence——

Q. Whose presence? A. Dr. Piper's. I told the Doctor that Mr. Thomas had come a long way to see him and was naturally interested kindly in him, and advised him to see him. I could not re-

main, and after my return to Washington (the Doctor (Piper) promising to come a few weeks after if I would come for him), to my surprise, I learned that, in the most cruel and shameful manner, Dr. Thomas had carried Doctor Piper out of his bed to Albany and thence to Chicago. I was not made aware of this except by letters from the nurse and Mr. Hine, speaking of such conduct on the part of Dr. Thomas, and then a letter came purporting to be from Dr. Piper, written by Dr. Thomas, stating that he had reached Chicago safely.

410 Q. Now, at whose instance or request did you go to Saratoga upon these two occasions subsequent to the death of Mrs. Piper? A. I went at the request of Dr. Piper to bring him home.

Q. Did you, during the period intervening between the death of Mrs. Piper and the time of your last visit to the Doctor at Saratoga, receive any letters from him? A. Oh, yes; the Doctor sent some letters from Saratoga. A letter was written by Dr. Piper on January 5, 1893, the same day that I left with the remains of Mrs. Piper, in the morning, in which he says as follows:

"DEAR NED: You had better go slow in our business affairs. If I die without a will my property goes to my brothers and sister. They, the brothers, are keen business men and will contend every inch. You have no right to set a watch over me so that none of my friends can call on me. Once for all, do fair by me, you will get all right. Remember also that it will be no use to come here until the Dr. will say it is best for to come.

R. U. PIPER."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 31."

Mr. HAY: On January 9th Doctor Piper also wrote another from there, stating as follows:

"In reply to yours of the 6th, I repeat what I said before, that I cannot be moved till I can sit up in bed at least. And that when you send me what is due from the Sharon estate, I will make a will in your favor. Dr. Thomas has just written me offering to take charge of the whole matter, so that the property goes to him or to the public. It don't matter which. I will add here truly I would rather it would go to you than any one else.

R. U. PIPER."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 32."

Mr. HOEHLING: What is meant in this letter by the statement "when you send me the money due from the Sharon estate,"

411 etc.? A. That is the bill upon which Dr. Piper had his mind resting during the entire illness of Mrs. Piper. It seemed the amount of some $9,000.00 was due from the Sharon estate to Doctor Piper upon the settlement of the Sharon will case, and a certificate had been given to him by which the Newlands would pay the same

when the distribution should be made. I had called upon Mr. Newlands several times for the purpose of getting it, but he was not prepared at that time to pay the amount, and so the Doctor was very anxious about this money. It was afterwards paid to the Doctor direct, and I have been informed since it has been borrowed by Dr. Thomas, after he had carried him off to Chicago. That is the matter to which he refers in that letter.

Q. At the time of the writing of that letter that claim, as a matter of fact, had not been collected? A. Oh, no; not until some time afterwards, because it was not possible to collect it. There was nothing wrong about it, but the estate was not ready for distribution; it required a year afterwards, I think.

Q. During this period did you receive any communications or communication from Mr. Hine, of the hotel, in relation to the Doctor's condition? A. Upon January 9th there was a letter written by Mr. Hine, the proprietor of the hotel, to me.

Mr. LEIGHTON: This question and answer objected to as hearsay.

Mr. HOEHLING: In that letter of January 9th did he speak of the condition of the Doctor's health? A. Yes; he states:

"Dr. Inlay said yesterday he thought Dr. Piper was fail-
412 ing, but today he seems brighter, but does not sit up any. His mind seems to be wandering most of the time. He has got it into his head you are coming for him and take him away by main force and keeps his revolver by his head loaded (in his bag). I told him you would not come for him until he telegraphed you to come which seemed to quiet him. I really do not think the Dr. was capable of appreciating your kind letter or is able to travel just now, but as soon as I think he is able will write you. It caused me some trouble to get rid of Mrs. Johnson as she had drawn her pay until today and was determined to stay. I suppose my determination caused the Dr. to think there was a watch placed over him, but I could not be annoyed with her and her company coming here as it is very evident she was getting all she could out of the Dr. of course it did not affect us only as annoyance in seeing her pull the wool over his eyes. William is all right and trustworthy."

This Mrs. Johnson he speaks of was a designing nurse who fleeced the Doctor right and left.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 33."

Mr. LEIGHTON: The admission of this letter is objected to as hearsay.

Mr. HOEHLING: When next did you receive a letter from Dr. Piper, if at all? A. January 12, 1893, stating:

"Dr. Piper says better have all things square."

And the nurse adds a postscript stating:

"Have been with him constantly night and day. He is under the effects of morphine or business trouble, and talks at random."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 34."

Mr. LEIGHTON: Admission of letter objected to as hearsay.

Mr. HAY: January 14, 1893, a letter written on that date from Dr. Piper, in which is the following:

"DEAR FLORENCE AND EDWIN: I thank you very much for your kind letter. We will have to wait until the weather is better. In the meantime you find out the expense of a single car. Dr. Reynolds told me that a lady went as sick as I am. You, as you know, are where you can find out everything about the matter. Write me every day, in the meantime the weather must change. All shall be made pleasant between us.

R. U. PIPER."

413 Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 35."

Q. Was it after the receipt of that letter you went to Saratoga for the purpose of bringing Dr. Piper back with you? A. Yes.

Q. Was it on that occasion you met there Mr. G. S. Thomas? A. Yes, and upon the Doctor stating that he was not able to come I stated that I would have to return home, but would come to Saratoga for him later.

Q. Now, when was it and in what way that you learned of the taking of Dr. Piper from Saratoga by Dr. Thomas? A. On January 25th, 1893, a letter was written by G. S. Hine from the hotel in Saratoga, in which he states:

"Dr. Thomas left very unexpectedly this morning with Dr. Piper for Chicago. Dr. Thomas told me there was a perfect understanding between yourself and him in relation to moving Dr. Piper. He settled all bills."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 36."

Mr. HAY: That was the first knowledge I had of the removal of Dr. Piper.

Mr. LEIGHTON: The admission of that letter is objected to as hearsay.

Mr. HOEHLING: Up to that time had you received any communication from Dr. Piper or Dr. Thomas that that removal was contemplated? A. Not in the least. Doctor Piper stated to me that he would come home if he was able in a few weeks, and Dr. Thomas stated that if he desired to do so that he (Thomas) would come with him. I received a letter written January 9th, 1893, from the nurse that I placed in charge of Doctor Piper, which contains the following:

414 "Unexpectedly Dr. Thomas left for Chicago with Dr. Piper. The Dr. didn't have judgment of his own to use, and yet he didn't want to go. I went with them as far as Albany. Dr. Thomas acted very improper all through. Instead of hiring a carriage at Albany he had the Dr. walk to the hotel which nearly used him up. We were obliged to stay at Albany all night. Dr. Thomas is sim-

ply looking for gain and using all his power to influence the Dr. against you and your religion. Dr. Piper destroyed the Miner will, and made another which, I wrote, leaving everything to the Thomas family. Mr. Hine was very indignant with Dr. Thomas in the course he pursued. Dr. Piper gave me that revolver which I accepted more for his own benefit than mine."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 37."

Mr. LEIGHTON: That letter is objected to as hearsay.

Mr. HOEHLING: Did you at that time, Mr. Hay, receive any communication from Dr. Thomas, either to the effect that he was about to remove or had removed Doctor Piper from Saratoga? A. I received a letter from Dr. Piper, written by Dr. Thomas, in which he stated that he had gone to Chicago for a visit for a short time. If I have that letter I will introduce it as an exhibit; that was the substance of it.

Q. Was that before or after the removal? A. Shortly after his arrival in Chicago.

Q. After their arrival in Chicago did you receive any communications from Dr. Thomas in relation to Dr. Piper? A. I received communications relating to the Doctor, stating that he would be there for a visit, but that he would come home as early as possible.

Q. Did any of these letters acquaint you of the condition of Dr. Piper? A. They did not, except that he was not well, and that he would remain there a while before coming home. I used to write to Doctor Piper, complaining of not having heard from him
415 directly, believing that my communications did not reach him. Finally, there came a dictated letter by R. U. Piper, written by Thomas under date of March 16, which contains the following:

"I am gaining some every day. I sit up and walk about my room. Expect to start for Washington soon. Hope you will not go away from home to be gone long at a time as I want to see you on my arrival. Dr. Thomas will come with me. R. U. Piper, per G."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 38."

Mr. LEIGHTON: The admission of that letter is objected to as hearsay.

Mr. HAY: Another letter was written at the Doctor's dictation by Thomas, under date of April 11, 1893, in which, as an explanation of my hearing from him only through letters dictated to Dr. Thomas, he states:

"I have written very few letters since my arrival in Chicago as I am obliged to have some one write for me and Dr. Thomas is so busy I dislike to ask him all the time. The reason why I have not written oftener is my loneliness since my wife deceased." * * *
"I shall be in Washington before many weeks, I hope, everything looks that way."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #39."

Mr. LEIGHTON: Admission of that letter objected to as hearsay.

Mr. HAY: Doctor Piper then went to the Hot Springs, from which place I received a letter from the Doctor, written by Thomas, which contains the following:

"Having improved very much in health, I deemed it best to make a visit to this place prior to me coming to Washington. I arrived here in good order on Saturday last." "I shall remain here for a week or ten days, when I shall return to Chicago, from thence to Washington, probably."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #40."

416 Mr. LEIGHTON: Admission of that letter objected to as hearsay.

Mr. HAY: On August 1st, 1893, the Doctor wrote a letter to me himself, stating:

"You complain in your last letter that I have not written you myself since I have been here. The truth is that until recently my eyes have been so affected that I could scarcely write my name even, and the Dr. has written for me. Under the circumstances a dictated letter is very likely to be quite different from an original one, and I have only to say that I am wholly responsible for these letters." * * * "You see by this that I can now scarcely write so that you can make out the words. I will not write at all about business matters or our relations to each other but must wait for a personal interview when I hope all will be explained and settled between us. Affectionately, R. U. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #41."

Mr. HOEHLING: Did you, Mr. Hay, or your wife answer that letter?

A. I did, and also Mrs. Hay wrote a long letter to Dr. Piper. We were under the impression that he was there under duress, which proved to be the fact. Mrs. Hay wrote him a kind letter, and upon the 23rd of August, 1893, Doctor Piper himself wrote the following:

"Just thank Florence for her very nice letter, and all of you for the beautiful photos. Send my next to me *personally* care of I. H. Frye, pharmaceutist, #2839 Cottage Grove avenue."

(This was the first time that the Doctor gave any evidence that his letters were being inspected and that he was not at liberty.)

"What I say to you in this you must not even *hint* at all to any one. The Dr. will do everything I believe he can to prevent my coming east and I think you had better come on here as soon as you can make it convenient. I *mean* to go back with you if I am able. He, the Dr., sees all my letters and hence I shall have to show him yours as it will seem strange if I did not. Put in the same envelope

one marked with a figure (2) on the first page as if accidentally done, (a friendly letter as usual.) And now as to business.

417 I have told him that the Government still owes me on the Yankton case. Get some official summons of some kind as you can do before a committee in the Court of Claims, calling me to Washington. Something of the kind will ease matters very much. Perhaps it will be best to write your usual friendly letter directed to me here, and send business as above care of I. H. Frye, 2839 Cottage Grove avenue, Chicago, Ill. Several gentlemen connected with Congress have offered to take my Yankton matters up, hence no doubt you can get a summons or some other official document, calling me to Washington. I think I had better not write any more about business but wait till I see you which I hope will be soon. On thinking the matter over I have no doubt but it will be best to direct your friendly letter as usual to me here. Any private business direct to me, care of I. H. Frye as above. I ought to come in order to have my eyes treated if for nothing else. Find out about this and write me as soon as possible."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. *No.* # 42."

Mr. HAY: This was the first evidence of his being under surveillance. On Saturday, the 26th of August, 1893, Doctor Piper wrote another letter, in which he states:

"I write so soon as I think it will be the best course for you to make *bona fide* arrangements (inquiries perhaps I should say) for the treatment of my eyes as they are very bad. You can make this openly and without concealment and write me in regard to it. I will say here that I am far from being well, so ill indeed that it may be question whether I shall be able to go East at all. Come here yourself at the house to see me at any time after 12 o'clock as then I shall be pretty likely to see you alone. I cannot put on paper, nor must you even hint at what I write. Certainly I am treated with the utmost kindness and attention by Dr. Thomas and his family." "Write me when you expect to come here."

There is a marginal note in pencil by the Doctor, as follows:

"Be particular as to what I say as to coming to see me at the house so that I can see you alone."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 43."

Mr. HAY: August 29th, 1893, Doctor Piper wrote another letter, as follows:

"DEAR NED: Why do I not hear from you? I have written two important letters within time enough for an answer as far as the mail is concerned. Be particular to address me R. U. Piper, M. D. 2839 Cottage Grove avenue, care I. H. Frye, pharmacist, as per inclosed care."

418 This gentleman—Mr. Fry, I may say—kept the drug store at the corner.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 44."

Mr. HAY: August 30th, 1897, Doctor Piper telegraphed me as follows:

"DEAR NED: Have not heard from you. Have written three times. Answer No. 2839 Cottage Grove Ave. R. U. Piper."

Telegram offered in evidence on behalf of complainant and marked Exhibit "E. B. H. # 45."

Mr. HAY: On the same day, August 30th, he sent a telegram to Mrs. Florence Hay as follows:

"Why do I not hear from Ned. Answer quick.
R. U. PIPER."

Telegram offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 46."

Mr. HOEHLING: Were you at home when these telegrams were received? A. No; I was out of the city; otherwise I would have gone at once. I received also after that a letter written August 31st, 1893, by Fry, the druggist, as follows:

"Dr. Piper fell downstairs last evening and is confined to his bed today. Injuries are not thought to be serious. I write at his request. I. H. Frye."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 47."

Mr. HAY: On September 2nd, 1893, a telegram was received from Fry as follows:

"Mail all letters hereafter to 2930. Doctor Piper is doing fairly well. I. H. Fry."

419 Telegram offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 48."

Mr. HAY: On September 4, 1893, a letter was received from Dr. Piper as follows:

"DEAR NED: I am on my back as the result of a fall, looks as if it might be for a month perhaps. In order to settle matters between us in regard to the house and c. I think you should come personally to Chicago, perhaps as soon as convenient. Write me to the house of course. R. U. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 49."

Mr. HAY: I went to Chicago and found the Doctor confined to his bed in a back room, overlooking an alley. The room, being 12 x 14, was hardly large enough, besides his bed, for the usual appointments of a bed-chamber. The Doctor wanted to come home with me, but was suffering from the effects of the fall and could not come; so therefore I had to return to Washington without him.

This trip to bring him home cost upwards of $60.00, which I paid myself, and for which I have never been reimbursed.

Q. In connection, Mr. Hay, with that same matter, you testify you made five separate trips to Saratoga and return in connection with the illness of both Dr. and Mrs. Piper, and also with connection with the death of Mrs. Piper. What part, if any, of this expense by you has been reimbursed? A. None whatever.

Q. This visit to Chicago of which you have just spoken, was that the first time that you went to Chicago to see Dr. Piper? A. First time.

Q. What seemed to be the condition of affairs at that time
420 existing between Dr. Thomas and Dr. Piper? A. Dr. Thomas seemed to have entire and absolute control over the person and mind of Dr. Piper.

Q. Was Dr. Thomas a relative of his so far as you know? A. Not at all; he was a business agent of his; he collected the rents for the property in Chicago.

Q. You stated that you found the Doctor's physical condition such that he could not be removed at that time to Washington? A. That is the way I found it; yes.

Q. Did the Doctor express any desire to come back with you at that time? A. He did, and cried copious tears because he could not come.

Q. Did he seem cheerful or otherwise? A. No; he was not cheerful, but was downhearted, and my coming to him seemed to be the brightest thing that had come into his life since his wife's death, and he so expressed himself.

Q. Was opportunity afforded you by Dr. Thomas and his household to be alone with Doctor Piper while you were there? A. Yes; they permitted me to talk with him alone, coming frequently to the door to see how we were getting along.

Q. Did you have any conversation with him as to the manner in which he was kept in Chicago, or was that subject not mentioned between you? A. It was spoken of—that he had been away for a long time and away from home, and that his place was at home and with us, and that he should be there. He claimed that it had been impossible for him to get away, and that he dare not at any time suggest coming to Washington.

421 Q. Did he, at that time, seem to stand in any awe of this Dr. Thomas, or fear? A. It seemed to me, by my observation of Dr. Piper, that he was absolutely under duress, though I will say this, that Dr. Thomas and his family were extremely courteous and kind to me.

Q. Had Dr. Piper any property in Chicago from which he was receiving rent at that time? A. One house.

Q. And Dr. Thomas was the agent? A. He was the agent for it and collected the rent.

Q. Was that the only time, Mr. Hay, that you went to Chicago to see Dr. Piper? A. No; I went later to bring him home.

Q. I want to go back now to the time when Dr. Thomas went to Saratoga to see Dr. Piper. Do you know, from anything that was

said to you by Doctor Piper, whether or not Dr. Piper had sent for Dr. Thomas, or whether he had come to Saratoga voluntarily? A. I do not know whether he was sent for or whether it was a voluntary going.

Q. Do you know whether or not Dr. Piper was pleased at his coming? A. Dr. Piper, on the other hand, was very much displeased and refused positively to see him and instructed me to order him to leave, as he did not want to have anything to do with him, and he stated that his presence there would drive him (Dr. Piper) crazy. These were the Doctor's words.

Q. Did he, however, finally consent to see him or not?
422 A. I, not knowing Dr. Thomas as well then as I have since, stated to the Doctor that it was only out of kindness that he came, and that he would feel very much hurt if he did not see him, and finally I persuaded Doctor Piper to see him.

Q. That visit, Mr. Hay, to Chicago, was about when—the first visit, I mean? A. In September, 1893.

Q. I now hand you what purports to be a copy of a lease, dated the 20th of October, 1893, between R. U. Piper, as party of the first part, and yourself, as party of the second part, of the property known as # 1512 Corcoran street, commencing the 1st day of January, 1894, for three years, and marked "Defendants' Exhibit C" in the deposition of the defendant R. U. Piper, heretofore taken in this case. State, please, if you ever signed the paper of which this purports to be a copy; and, if you did, the circumstances under which you signed it, and the disposition that was made of the paper itself. A. I signed the paper. It was upon the importunities of a letter from Dr. Thomas, purporting to be from Dr. Piper, stating that his rents were not coming in very rapidly, and that he was somewhat under expense, having to pay his board, and asking if I could be of any help to him in the way of an allowance. Realizing the situation of Dr. Piper, and not knowing what might be done by Thomas to rob both Dr. Piper and myself of the home, and wishing to make an allowance to Dr. Piper, to which he was entitled, I signed this lease, knowing that whatever might occur it would hold me in possession of the property at least during its existence, and that before that time the adjustment of the matters by Doctor Piper and myself would be consummated, looking to his return home and his
423 continuing with us, in accordance with our agreement. I complied with the terms of the lease, after it was signed by me, and I never denied the right of Dr. Piper to have an allowance made to him, if he so desired it.

Mr. LEIGHTON: So much of this answer as is inconsistent with the terms of the lease itself is objected to as incompetent and irrelevant.

Mr. HOEHLING: What disposition, Mr. Hay, was made of the original of the lease to which you have referred? A. I really cannot say. I think I have the original of the lease.

Q. Was it executed in duplicate? A. I really cannot say that I have the original of the lease.

Q. That is, you have one copy? A. I have, yes; I believe the other was sent to Dr. Thomas.

Q. Have you the letter that you referred to as having been received from Dr. Piper in relation to the making of this lease? A. I will not be certain. I think all the letters and communications and all writings pertaining to our affairs have been kept.

Q. I mean have you it at hand? A. It seems not to be at hand, but if I have it I will file it as an exhibit in this case, as I would if it were at hand.

Q. Was this lease signed in this city by you? A. Yes.

Q. And while Dr. Piper was still in Chicago? A. Yes.

424 Q. And did you send it on to Dr. Thomas? A. Sent it to Dr. Thomas; never heard of it since, except I kept my obligation.

Q. During the time intervening between the leaving for Saratoga of Dr. Piper and his wife to the time of the preparation of this lease had or had not the rooms of Dr. Piper and his wife been reserved for them in the house? A. Always. They had never been disturbed in the least until Dr. Thomas came from Chicago and in a most sacre*li*gious manner threw the Doctor's books and papers into a dreadful state of confusion all over his apartments, abstracting documents, destroying them by fire and tearing them up, and taking away such pictures of value and books of value and the furniture as belonged to Doctor Piper, which I regretted having allowed; but upon an order from Dr. Piper in his own handwriting, and this being his personal property and in his own apartments, I yielded only to such personal request as came from the Doctor. It was very wrong to do so, as we have since found out.

Q. In what shape was that request from Doctor Piper? A. Personal request; an order presented by Dr. Thomas from Doctor Piper upon me to deliver such things as he (Thomas) might select from his apartments. His rooms had never been opened from the time that he went away up to the time when Dr. Thomas came to open them. Moth and dust had proved disastrous to carpet and cloth material and such perishable stuff as was in the rooms.

Q. Had they upon leaving the house in August, 1892, left their apartments open or had they locked them? A. They were locked, and they took the keys with them.

Q. Had you duplicated the keys? A. I had not.

425 Q. When Dr. Thomas presented to you the order did he have the keys? A. Dr. Thomas also brought the keys, and when he left he gave us the keys and we had them from that time.

Q. And then, for the first time, you were able to open them? A. Then, for the first time, they were able to open them, which was done for the purpose of cleaning them, as the accumulation of years of dust and the myriads of moth had a tendency to affect the other part of the house.

Q. Did you visit Doctor Piper upon any other occasion in Chicago other than the one to which you have referred? If so, when and under what circumstances? A. I went again to visit Doctor Piper for the purpose of bringing him home.

Q. Do you recall when that was? A. No; I do not.

Q. Was it subsequent to the signing of this lease? A. Yes; I think it was.

Q. Was it subsequent to the visit of Dr. Thomas to your house? A. Prior to that time.

Q. Do you recall how you happened to go on that second occasion to Chicago? A. I think I went to the World's Fair.

Q. And while there visited him? A. Yes.

Q. Did he return with you? A. No; he did not. He never returned with me; he was still there with the Thomases.

426 Q. In signing this paper, which is referred to as a lease, Mr. Hay, please state whether or not it was your purpose or intention thereby to release Doctor Piper from any obligation that he might theretofore have made to you in respect to that house.

Mr. LEIGHTON: Question objected to. The paper speaks for itself.

A. Not under any circumstances. It was never so considered nor so intended. The Doctor's right to the control of his property has never been denied by me, and, being absent from me, the allowance to him in part for board seemed justifiable, whether it was made in this form or in any other form, but at the time the lease was signed there was a receipt and an agreement sent by Dr. Piper to be signed by me, releasing him from all claims from me.

Q. Did you sign it? A. I did not.

Q. You have that paper? A. I have it and I will file it. It is as follows:

"Whereas, certain dealings and agreements have heretofore been had and made between Edwin B. Hay and Richard U. Piper, among which were certain agreements and transactions in relation to the house, No. 1512 Corcoran street in the city of Washington, D. C., and

Whereas, the said parties have this day, made a full settlement of all amounts, accounts and agreements heretofore had, made and entered into between them,

Now therefore, I, Edwin B. Hay, do hereby acknowledge that I have received full payment and satisfaction of all the claims and demands in any way arising or growing out of any agreements or transactions heretofore had between the said Piper and myself; and further that I have no claim or interest of any kind or nature in the premises above described, No. 1512 Corcoran street in the city of Washington, D. C. except the leasehold interest which I have therein under the lease from the said Piper, bearing even date herewith.

In witness whereof, I have hereunto set my hand and seal this 20th day of October, 1893."

Paper offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 50."

427 Mr. HAY: This, I believe, is the only wish of Doctor Piper's with which I did not comply. The whole matter of the lease, so called, was nothing more than a scheme of Dr. Thomas's, as Doctor Piper told me.

Q. When did he tell you that? A. In a subsequent conversation.

Q. That it was instigated by Thomas? A. Yes.

Q. When was it that Thomas caused the remains of Mrs. Piper to be surreptitiously, as you say, carried from the vault in this city and taken to Chicago? A. It must have been arranged for shortly after the time the furniture was carried away.

Q. Do you think it was at that same visit? A. I think the arrangements were made at the same time. He went to the safe-deposit company and took what Doctor Piper had there, or directed it to be sent to Doctor Piper, and he saw the undertaker at the same time, I afterwards learned.

Q. Did he intimate to you that he proposed to remove these remains; speak to you about it? A. Not in the least; nor did I learn of it until a month after that, and it gave me much pain to know of such conduct as that on the part of anybody.

Q. Did you continue to receive letters from Dr. Piper? A. Yes.

Q. As frequently as before? A. Not as frequently as before. The letters were very few and far between, and my letters to him never received an answer.

428 Q. When did you first meet the defendant Miss Anna V. Whitney and under what circumstances? A. Before that I received a letter from Doctor Piper himself, from Chicago, under date of April 9th, 1894, in which, speaking of the receipt which I have already stated that I refused to sign, he says:

"You seem to have forgotten that I sent you a receipt gotten up by the judge, which you were to sign and return. I don't see why you cannot please me in this by doing as I have several times requested. You know I have treated you finely in my will. Perhaps I have already done more for you than I ought. R. U. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #51."

Mr. HAY: Miss Whitney several years ago came to call upon Dr. and Mrs. Piper, and dined with us. That is the first time I met her. Then, after the death of Mrs. Piper and the incidents of the Saratoga life of Doctor Piper and the going to Chicago, Miss Whitney came again to inquire after her uncle, and I informed her of the state of affairs existing, and she said that she would go to Chicago and bring Doctor Piper home. This was in June, 1895. I received, though, prior to that, a letter from Doctor Piper, written by himself July 29th, 1894, from Chicago, in which he says:

"As I have before told you, I have left you in will many times the whole rent, etc."

That was the last letter that I received from him, as I remember, in Chicago.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 52."

Mr. HOEHLING: When you say "home," in speaking of Miss Whitney going after Dr. Piper, to what do you refer? A. To Washington.

Q. Did she do so? A. No; she did not. She went to
429 Chicago, and I was surprised to receive a letter from Newport, Maine, announcing his arrival there for a visit.

Q. Whose handwriting was that letter in? A. It was written by Miss Whitney and signed by Doctor Piper. It was dated June 22, 1895, and contained the following:

"Please communicate with me here. I want to have a confidential talk with you in the near future, and I can do so *from here* with impunity. Keep everything in the case to yourself, as a lawyer should. I arrived here last night with my niece in a very good condition. I am here on a visit for the summer."

It is signed by Doctor Piper himself.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 53."

Mr. HOEHLING: By whom is the letter written? A. By Anna V. Whitney, the defendant in this case, and it is signed by Doctor Piper himself.

Q. Upon the receipt of that letter did you answer the communication, or what did you do? A. I communicated at once with the Doctor. I felt very much relieved to think that Miss Whitney had accomplished the extrication of Doctor Piper from the wiles of Dr. Thomas. I expressed this in my letter, and also stated that it was a very great relief to the Doctor, and that now there could be a perfect understanding and comprehension of the whole affair between the Doctor and myself, without the influence and interference of Dr. Thomas, who had so sought to rob both Dr. Piper and myself.

Q. Did you see the Doctor while he was at Newport? A. In
July, 1895, I received a letter from Newport, under date of
430 July 3rd, in the handwriting of Miss Whitney, signed "R. U. Piper, per W.," containing the following:

"DEAR FRIEND: Your letter with check for rent received this p. m. Would you not like the whole house, providing we can make a treaty to that end. I merely make the suggestion here for future consideration, and of course it must be kept as a lawyer's secret. I would not like any one in Washington to know anything about it at present, nor on any account, have it get back to Chicago. I hope you will be able to write some business complications for me in this connection. I do not know as it can be done by correspondence. Will wait until I hear from you before writing more."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 54."

Mr. HAY: Under date of July 13th, 1895, I received another com-

munication, also in the handwriting of Miss Whitney, signed "R. U. Piper, per W.," stating:

"Why do you not answer my letter of the 3rd inst., in which I made a proposition intended for our mutual advantage? Why do you not send me the tax receipts? Is there any hitch about them? Do not let there be anything but what is fair between us. I wish to arrange everything so that if I should be called at any time things will be fair for you and yours. I am expecting to depend on you to arrange affairs in Chicago. When do you expect to leave Washington for your vacation? Please write as soon as possible."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #55."

Mr. HOEHLING: In whose handwriting is that letter? A. Miss Whitney's.

Mr. HAY: On July 21st, 1895, another letter was written by Miss Whitney, the defendant, and signed "R. U. Piper, per W.," which contains the following:

"I have not received your letter in reply to mine of the 3rd inst. As you are coming so soon we had better wait and arrange the whole matter then. You will come and stop with me while here and I will hope to see you very soon."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #56."

Mr. HAY: On July 30th, 1895, another letter written and signed by Miss Whitney, the defendant, in which he says:

431 "I am very glad to know you are coming so soon. Can you tell me about what day you expect to start? I am anxious to see you, as I think the Chicago matter ought to be attended to as soon as possible."

Signed: "R. U. Piper, per W."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #57."

Mr. HOEHLING: Did you go, Mr. Hay, to Newport after that? A. I made a visit to Newport, a most pleasant visit. The relationship between all the parties, the Doctor and his sister and niece, was extremely pleasant. I was delightfully entertained, and, all in all, it was one of the most happy visits I had ever made anywhere. I returned home with the instructions from the Doctor to proceed at once to begin the case against Thomas, out in Chicago, for the recovery of his property, both personal and real, which had been, as the Doctor stated to me, taken from him by Thomas fraudulently. I was informed by Doctor Piper for the first time, upon this visit to Newport, all the facts of the matter, which carried out the suspicion which had been in my mind. He stated that Doctor Thomas had not only taken the money that he had in Chicago, but likewise that that he had here in the trust company, and also the money received by Doctor Piper from the Sharon estate, and had taken it all without his consent, as I understood, stating that

he had borrowed it from him. Dr. Piper also told me that he had given certain trusts upon the property in Chicago (though I did not understand that the property in Washington was also included in the trusts to Thomas or to any trusts from Dr. Piper to anybody) for the purpose of securing the payment of $2,000.00 a year board to Dr. Thomas.

432 Q. You mean that all these trusts were for that purpose? A. To secure the payment of board; yes. I saw that it was a scheme to rob Doctor Piper, and I proceeded at once to begin communications looking to an adjudication of the matter. I had by letter and otherwise communicated all the facts *of* my correspondents in Chicago, whom I saw personally afterwards, and we had arranged to proceed and had also arranged a method of proceedure.

Q. In following out the instructions given you by Doctor Piper did you or not go to Chicago? A. I did, and consulted a firm of lawyers in Chicago for the purpose of conducting the proceedings.

Q. Did you or not employ them in Doctor Piper's behalf? A. I employed these gentlemen in behalf of Doctor Piper and associated them with me in the matter, involving then no expense on Doctor Piper, as I instructed them that the Doctor would prefer a contingent matter, and they were so engaged in the case. Regarding it, on Sept. 10, 1895, Doctor Piper himself wrote a letter to me, in which he states:

"You will not take any legal steps in my case involving any costs, until Miss Annie gets back, nor indeed then unless they can be made absolutely contingent upon the recovery of the money got fraudulently from me. I had better give up the whole thing to the thief than be involved in costs outside of this. Write me precisely what you plan to do. As soon as Annie gets back, we will decide the whole matter. R. U. Piper."

"Annie" is the defendant, Miss Anna V. Whitney, who had gone to Chicago to get the personal property left in Doctor Piper's rooms in that city.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #58."

Mr. HAY: On September 14th, 1895, the Doctor wrote another letter himself containing the following:

433 "Yours just received. You speak of Thomas' *emnity* to you. He has said to me over and over again that he would not let me go to Washington without him as you or yours would poison me in such a case. You ought to be aware of how feeble I was when he planned to rob me. He has said many times that I did (not) know what I was about at the time I was sick at his home, which was the time when they got the cloak etc. I indeed can remember in all my written transactions with him, I had trouble about the head and had much difficulty in reading writing, and ordinary printed letters. I am not able to read a newspaper at all even now. I call the taking of the cloak etc. a robbery committed on me when I was not in a sound mind, and so of all the signatures

to papers. I do not know how far I should be allowed to testify in the case, but as it regards my present condition in this regard three physicians will testify to my mind being perfectly clear. I think we should hold the robbery charge over him as he has frequently said that I was out of my mind while these transactions were going on. He said that once I tried to break the window with my hands. This is quite true as I remember, and he was at the time getting my signature to various documents. I remember that I often spoke of taking poison at this time, thus you will see what a weak victim he had to work upon. You can send me all the questions you please. I hope to remain able to answer them. Let everything be typewritten.

R. U. PIPER."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #59."

Mr. HAY: On September 29th, 1895, another letter was written by Doctor Piper himself, in which he says:

"You will do nothing in the matter until I decide what course to pursue. This will be best for your own interest as well as for all concerned in the matter."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #60."

Mr. HAY: On November 2nd, 1895, another letter was written by Miss Whitney and signed by Doctor Piper, in which he says:

"You will remember that I told you when here that I wished to settle the matter with Thomas if possible without suit. And that you was not to take any steps in the case until I directed you to do so. Now, I have put the matter in ex-Gov. Davis' hands to settle it if possible, and as he has colleague in Chicago it will not be very expensive. If he cannot settle he will bring the case to Maine, or try it in Chicago, as it seems best. If it is not settled I will (or Davis) write you when we need your advice or help. With
434 many thanks for your kind inquiries, I will say that we are all quite nicely now, and with a hope that this will find you and yours well, R. U. Piper."

Second postscript in the handwriting of Dr. Piper, as follows:

"2d postscript.—The course decided upon in the case seems to me best for all parties. R. U. P."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #61."

Mr. HAY: Therefore, with this instruction and dismissal from the case, I had nothing more to do than to wait and see the result.

Mr. HOEHLING: Now, did you learn in the interview which you had with Doctor Piper at Newport, Maine, that he had given a deed to Thomas or at the instigation of Thomas which embraced, among other property, this property on Corcoran street? A. No; I never knew that until just prior to the beginning of these proceedings. Q. Long prior to — shortly before? A. I don't remember just

when I first learned of that. I think it was when I went to get the tax bills. I saw then that it was in the name of Moore, a defendant in this case.

Q. That was the first you knew of it? A. That was the first. The Doctor told me that he had made some trusts, but I inferred that they were only on the property out there, none having been recorded here to my knowledge.

Q. Did you learn that the trusts had been recorded here, as a matter of fact? A. Yes; I learned that when I received the tax bills.

435 Q. What correspondence, Mr. Hay, have you had with Doctor Piper since this letter of November 2nd, 1895? A. On December 18th, 1895, another letter was written by Miss Whitney and signed by Doctor Piper, in which he states that Case, Hogan and O'Donnell had sent a bill for $25.00; that he would pay it, but that he had not authorized any one to employ them further in the case. Further he states:

"It is better for both of us not to have any misunderstanding between us. Anna informs me that you would like to use my rooms. You can do so until I otherwise advise you, if you will pack all my bric-a-brac and all the little things in the room and put them in the closet, and lock them up. R. U. Piper."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #62."

Mr. HOEHLING: When did you next see Miss Whitney, the defendant in this case? A. Several times I saw Miss Whitney. She was employed, if I understood her rightly, in a business house in New York that brought her around and about Washington every five or six weeks. I remember, though, having an interview with her in June, 1896, prior to leaving for Europe. I went away shortly afterwards. My correspondence with the Doctor was at intervals, always urging him to come home, and when I returned from Europe I advised the Doctor, by a very pleasant letter, of my trip, and on September 21st, 1896, in answer to the letter, one was written by Miss Whitney, signed by her, in which she states:

"Your very interesting letter to uncle written the 19th inst., is just received. We are all glad to know that your European trip was so thoroughly enjoyable. Uncle had some instructive remarks to make about nearly every place that you mentioned in your letter. He was much interested in your letter. Uncle wishes to be remembered to your family. Says he did not get a letter from you
436 in July. I only arrived home last Thursday and as I have a bad cold please pardon this scribbly letter. Uncle is about as usual, not very strong, and yet he weighs eleven lbs. more than when he came from Chicago. With kind regards from all to all, I am, very sincerely, Anna V. Whitney."

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #63."

Mr. HOEHLING: In June, 1896, when you say Miss Whitney

called upon you in this city, did you at that time inform her that you were about to take a trip across the water, and did you likewise write to appraise Doctor Piper of that fact? A. Yes, sir; I addressed a letter to the Doctor, stating that the dream of my life was about to be realized, and that I was going to take a trip to Europe; but in Miss Whitney's letter of September 21st she states that he did not receive that letter.

Q. Now, in June, 1896, when Miss Whitney came to visit you, did you have any conversation with her in relation to the return of the Doctor to live with you? A. Nothing, only in general conversation; that his rooms were ready there in the home # 1512 Corcoran street, and that we were waiting for him, and I said to Miss Whitney that we were always ready and waiting for him.

Q. Did Miss Whitney at that time or upon any other occasion state to you that the Doctor was going to remain with them permanently and not return to his home? A. No; I don't remember such a conversation as that.

Q. When Miss Whitney first visited your home in this city, when Mrs. Piper was living, how long did she remain there? Did she take a meal there or remain over night? A. Miss Whitney made a call about six o'clock one evening, and then she came the
437 next morning, and whether she remained all the afternoon I do not know, but she was there to dinner. She did not remain that night. I think she was on her way down to Norfolk from Washington or to some southern point.

Q. Do you know whether or not at that time Miss Whitney had knowledge of the close relations that existed between yourself and Doctor Piper? A. Oh, yes; she did, undoubtedly. Miss Whitney told me that when she went home after her first visit to Washington that she told her mamma that uncle and auntie were nicely fixed, and he seemed to be very fond of the people with whom he resided, and that he no doubt would leave his property to them by a will.

Q. When was that that she told you that? A. This was in an interview afterwards.

Q. Do you know whether at that time Miss Whitney knew that you were caring for and providing a home for Doctor Piper and his wife? A. I suppose Miss Whitney knew it. I don't know that.

Q. She knew you were all living there together? A. Oh, yes; Miss Whitney knew that.

Q. There is a deed attached to the answer of the defendant Anna V. Whitney, dated the 15th of June, 1887, from Charles B. Pearson and Mary E. Pearson, his wife, to Richard U. Piper, for lots Nos. 139 and 140 and 141, in subdivision of lots in square 193. Is that the Corcoran Street property? A. Yes, sir.

Q. Was that the deed for it? A. It is. I made the deed.

Q. Is it in your handwriting? A. My handwriting.

438 Q. When Miss Whitney called upon you in June, 1896, and you communicated to her the fact that you were going abroad, did she state to you that Doctor Piper was then contemplating making a deed for that Corcoran Street property to her? A.

No; the property interests of Doctor Piper were never discussed between Miss Whitney and myself.

Q. Made no statement of any kind? A. No statements of any kind. The Doctor's health, his being in Newport at her home, and general pleasant topics were discussed between Miss Whitney and myself, but nothing else.

Q. When and how did you first learn that the defendant Richard U. Piper had made a deed of conveyance of this Corcoran Street property to Miss Whitney? A. From the records of the District of Columbia.

Q. What action did you make after discovering that? A. I immediately wrote to the Doctor in relation to the matter, and he responded that he did not see that he had to consult me in regard to the disposition of his property.

Q. Have you that letter? A. I have. It is dated October 23rd, 1896, and signed by Dr. Piper, and contains the following:

"DEAR NED: Your letter of the 20th inst. just received. Now as to my affairs, it does not seem to me that I ought to consult you in regard to giving my niece my Washington house. She has been, and is like a daughter to me, and has done all my business for nearly two years. Now as for the agreement about my boarding with you while you was in my house, you was to pay me $200 a year, furnish board for myself and wife, and etc., now as I have not been there for some four years, I think you would be willing to pay me a fair equivalent for our board during the time. Since I have been acquainted with you I have always had a friendly feeling for you and have tried to help you all I could. I appreciate your kindness to me, but are we not about on a par in that respect. Would you like to rent the house again after your lease expires. If so, you shall have the first chance.

R. U. PIPER."

439 Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #64."

Mr. HOEHLING: I notice in this letter from the Doctor that he speaks of an agreement with you by which you were to pay $200, to furnish board for himself and wife, and etc. Was there or not any agreement of that kind made with the Doctor?

A. No; there was no agreement of that kind. The only payment that I agreed to make to him was in this agreement in the so-called lease by which he was given an allowance.

Q. And that was subsequent to the death of his wife, was it not? A. It was; yes, sir.

Q. Now, what was the next step taken in regard to this house after the receipt of that letter from the Doctor by you? A. I wrote again to the Doctor, advising him of the relationship existing between us and the agreement and covenant entered into between himself and myself, in the presence of his wife and my wife, and my fulfillment of the agreement to the letter in every particular prior to the death of his wife, and my willingness to continue to

fulfill it in every respect as I had already done in the past. To this I received, I think, another letter substantially the same as the one just filed as an exhibit; and when, in December, 1896, Miss Whitney came, I felt that as Doctor Piper had disregarded his obligations and had put himself in a position to prevent him carrying out his original agreements of willing me this property that it was time to have equity enlisted for the purpose of defining our
440 respective rights, and I filed a bill in equity and began these proceedings in which we are now taking testimony.

Q. When Miss Whitney came to the city in December of 1896 did you have an interview with her in relation to the property matter? A. It was upon that matter that Miss Whitney came.

Q. Did you acquaint her with what you understood to be your rights in the premises? A. Yes; I told Miss Whitney that she was not acquainted with Doctor Piper and his affairs during all these years that he and his wife had lived with me; that upon taking up his residence with us the Doctor had made a solemn contract with me concerning the disposition of this property; that I had fulfilled my part of it in every particular, and I did not concede to the Doctor the right to deed his property away, so as to prevent him from disposing of his property as in accordance with his agreement made with me to the effect that he would devise it to me by will. Miss Whitney, having received her knowledge of the affairs and her instructions from the Doctor, did not seem to agree that such was the status of our matters. It would not have helped matters any to have shown to Miss Whitney the exact facts as they existed between Doctor and Mrs. Piper and myself.

Q. Did Miss Whitney at that time make any demand upon you for the possession of the property? A. She did.

Q. A verbal demand? A. A verbal demand, yes, and then afterwards gave me a 30 days' notice.

441 Q. In writing? A. In writing, executed by Mr. Leighton, her attorney.

Q. Was that followed up by the institution of the "landlord and tenant" proceeding? A. Yes, sir.

Q. And those are the papers filed in connection with your supplemental bill? A. Yes, sir.

Q. What agreement, if any, was there between yourself and the defendant Richard U. Piper when you and the two families moved into this Corcoran Street house with respect to the occupation of that house by yourself and your family? A. We were put in possession of the house just as if it was our own house, it having been built for us by Doctor Piper, the consideration being that he and his wife should live with us during the balance of their lives; that they should be cared for and treated as mother and father, and that we were to be the children, and upon that consideration we went into the house.

Q. What limitation, if any, was expressed by the Doctor upon the duration of that occupancy by you of the Corcoran Street house? A. There was no limitation whatever. It was to be during the lifetime of Doctor and Mrs. Piper. Such a thing as limitation of the

time was never spoken of at all, other than the termination of life of either or both of the parties, and it was to be devised to me by will.

442 Q. Have you or not at any time since Doctor and Mrs. Piper left your home in August, 1892, refused to carry out your part of that agreement between you? A. Never in any particular. The rooms have been there ready to be occupied, the table has been ready to serve, and the hearts have been as warm as ever towards both of them, and since the death of Mrs. Piper towards the Doctor, and we have been waiting and eager to receive him into the home. Most faithfully in every particular has the obligation been kept by me.

Q. Has the house been preserved and cared for? A. It has, at my own expense; the repairs been put upon it at my expense.

Q. By whom have such repairs been made as have been needed during all the years you were in possession on the Corcoran Street house? A. I have kept the house in repair myself; kept the roof in order, and had the steam-heating apparatus renewed. There is a bill against the Doctor for some plumbing, having a new conduit carried from the house to the middle of the street.

Q. What part, if any, of the personal effects of Doctor and Mrs. Piper did Doctor Thomas leave in the Corcoran Street house after he had presented that order to you and removed the things? A. Two carpets, one folding bed, an organ, two small pictures, a stove, two tables, two or three small chairs, five trunks and boxes of books, and an attic strewn with trunks and boxes containing, I don't know what, but in many of which there was nothing except magazines and pamphlets.

443 Q. Were these personal effects just referred to by you in the apartments of Doctor Piper after Thomas had moved the other things? A. Always.

Q. To be disturbed when? A. To be disturbed about a week ago, when Miss Whitney, upon an order purporting to come from Doctor Piper, by Mr. Leighton, her attorney, removed the carpets, organ, folding bed, a number of boxes, many books, and two trunks from the house and packed the remainder of the boxes in the garret with some other things of Doctor's.

Q. Thereby removing substantially the remainder of the personal effects of the Doctor? A. The remaining personal effects except those that are stored in the attic.

Q. You have referred to the making of a will, at the dictation of Doctor Piper, upon the occasion of one of your visits to Saratoga; in fact, the will was executed by him and witnessed. By whom was that will witnessed, if you remember? A. Mr. G. S. Hine and his wife and a Mrs. Bennedict, the proprietor of the hotel, and two guests.

Q. Was it so executed and witnessed in your presence? A. Executed in my presence and in the presence of three witnesses.

Q. When and under what circumstances did you next, if at all, see that will? Q. Upon my arrival at Saratoga Mr. Hine stated to me that the Doctor had destroyed the will by tearing it into pieces

and throwing the pieces into the slop pail; that he had seen the Doctor do this, and had saved the pieces and he gave them to me, and I have them at the present time.

Q. Did Mr. Hine state why the Doctor had so destroyed the will or his purpose in so rescuing the pieces?

444 Mr. LEIGHTON: Objected to as hearsay.

A. Mr. Hine stated that he knew the relationship existing between the Doctor and myself, and had known it for several years; that he was present and knew that the will had been made by the Doctor in good faith, as he and the others had witnessed it, and that he knew that the Doctor was not in his right mind when he destroyed it; so, that being the case, he thought it his duty to save the pieces of this will.

Mr. LEIGHTON: Answer objected to for reasons above stated.

Mr. HOEHLING: Have you those pieces? A. I have.

Q. Will you produce them? A. These are the pieces and the box in which he gave them to me.

Q. Are these pieces the correct form of the will that was written by you at that time? A. They are the correct form of the will that was executed and signed by Doctor Piper in the presence of three witnesses.

Will introduced as evidence on behalf of complainant and marked "Exhibit E. B. H. # 65."

Mr. LEIGHTON: The introduction of this will I object to as being irrelevant and incompetent, no proper explanation being made of the destruction of the will; not being shown that the Doctor was incompetent to make another will when he destroyed this, its execution in the first place never having been properly shown.

Mr. HOEHLING: Mr. Hay, was it not, as I understood you,
445 signed and executed in the presence of three witnesses? A. In the presence of Dr. Piper, and in my presence, and in the presence of the attesting witnesses; and then, at his request and in his presence and in the presence of each other, these three witnesses signed the will.

Q. Please state whether or not Dr. Piper ever made another will other than the ones you have already referred to; and, if so, please state when the same was made and the source of your knowledge upon that subject. A. After Doctor Thomas had opened the rooms and had scattered the papers of Doctor Piper over the floor and used much of his documents to serve as packing to steady the pictures and books in the boxes, and left everything in a perfect chaos, and we went in to look over the scene, and upon opening the drawer in the table in the sitting-room, which had escaped the notice of Thomas, these wills, which I now produce, were found, one written by the Doctor and the other written by Mrs. Piper. We did not know of their existence until this time, when we accidentally discovered them, nor had we been advised of their existence.

Q. Were these two wills in the envelope in which they now are?

A. Yes; just as they are. They were placed on top, so that the turning of the knob to open the cover and the opening of the drawer would disclose this, the last will of Doctor and Mrs. Piper. The Doctor's will is as follows:

"In case of the death of my wife Elizabeth F. Piper, at or before my own death, I make this my last will and testament.

1st. All debts and funeral expenses are to be paid.

2nd. I give and bequeath to my sister Victoria A. Whitney, now of Newport, Maine, the sum of two thousand dollars
446 ($2,000) to be paid as soon as possible after my decease by my executor.

3rd. I give to my brother-in-law John P. Heywood, five hundred dollars ($500) to be paid as above, and I also give to the said Heywood one of my large pictures with frame. The said Heywood now lives at Alta, Buena Vista Co., Iowa.

4th. I give and bequeath to Edwin B. Hay of Washington D. C., on account of the love I bear him and his many kind services he has done for me all the rest of my estate, real and personal and mixed, to be his absolutely for his sole use and disposal and herein appoint him executor of this my last will.

RICHARD U. PIPER."

Wills offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 66."

Q. In whose handwriting is this inscription on the envelope? A. In the handwriting of Doctor Richard U. Piper.

Q. In whose handwriting is the will purporting to be signed by him? A. Handwriting of Dr. Piper.

Q. That is his signature? A. Yes, sir.

Q. And in whose handwriting is the other will? A. Mrs. Piper's.

Q. Are they both dated the same? A. Both dated August 25, 1892.

Q. That was the date of their departure from the city? A. The wills were made the day before they left our home, on the 26th of August (on the early train), showing the existence of the feeling with which they left.

Q. You say you did not know of the existence of these wills until you subsequently discovered them under the circumstances that you have just mentioned? A. I *do* not know of the existence of either of them until that time.

This witness will be cross-examined at another session, after the direct testimony has been put into typewriting.

447 TUESDAY, *May 25th*, 1897—12 o'clock m.

Met, pursuant to agreement, to cross-examine Mr. Edwin B. Hay, complainant in this cause.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, Esq., counsel for the defendants.

Cross-examination of Mr. HAY.

By Mr. LEIGHTON:

Q. You speak of meeting Dr. Piper first, I think, at Yankton? A. Yes; at Yankton, Dakota.

Q. The friendship that was therefrom was a mutual friendship, wasn't it, on your part as well as on his? A. Yes, sir.

Q. You went to Philadelphia some time after and was engaged there in a case with him; in what capacity, as a witness or as counsel? A. We were both expert witnesses.

Q. How did you become associated in that case, through Dr. Piper? A. Yes, sir.

Q. He had a large run in that line of business, did he not? A. The Doctor had several large cases.

Q. And he frequently got you in with him? A. Whenever handwriting was the question.

Q. He interested himself to secure your engagement as expert witness in matters of that kind? A. Yes, sir; we were in two cases together.

Q. Then, was it his habit to do so as long as he lived
448 with you, and as long as he testified in these kind of cases?

A. No; only in two cases. The other cases I had the Doctor with me sometimes.

Q. He came to this city in March, the latter part, 1887, to reside with you in the P Street house? A. Yes; March 25th, 1887.

Q. And resided there for fifteen months, until the completion of the house on Corcoran street? A. Yes, sir; until the first of August, 1888.

Q. Your wife was reluctant, you say, that you should have the Doctor come to your house, as he desired? A. Very reluctant.

Q. Why? A. We thought that coming on of two old people would change our mode of life very much; the care necessary in providing for and taking care of them would necessitate additional labor at home and additional burden of thought and consideration.

Q. The objection was more on the part of Mrs. Hay than yourself, wasn't it? A. I judge that it was so, and it was my desire to see that such an arrangement was perfectly happy and agreeable to her before we would consent to have it so.

Q. Now, prior to the Doctor's coming, in March, 1887, you say you fixed up two rooms (the two rooms that he occupied while he was there in the P Street house)—that is, you papered them? A. Yes; we papered and furnished them prior to their coming, so as to make it pleasant and comfortable.

Q. That was a comparatively new house, was it not?
449 A. Built in 1875.

Q. Had those rooms ever been papered before? A. I think those upper rooms had not been papered.

Q. Did you procure all the furniture for the rooms? A. All the furniture; yes.

Q. I suppose you have that furniture yet? A. I could not say

as to that. I don't know what became of it. When we went into the Corcoran Street house, of course the furniture was carried there.

Q. Was all of the furniture from the P Street house carried to the Corcoran Street house? A. Yes, it was carried to # 1512 Corcoran street; but as to that particular furniture, I don't know what became of it. Something may have been disposed of, while other bits may have been put about in various rooms in the house in which we lived.

Q. The additions or changes that you made in the P Street house prior to the coming of Doctor Piper, amounting to $3,000, which you speak of, were not made with a view of his coming especially? A. No; not directly with a view to his coming.

Q. They were made and completed prior to the time that you decided they should come? A. They were.

Q. How was that house heated? A. Latrobes.

Q. Did Doctor Piper, in speaking to you of his relations, ever mention to you Mrs. Whitney, the mother of the defendant? A. Not at that time. It was some time afterwards, because
450 of the correspondence it seems that had been carried on between Mrs. Piper and his sister, "Victoria." I did not know at the time that she was Mrs. Whitney, but she was the only one that he spoke of with affection.

Q. And whenever he spoke of her would he speak of her with affection? A. The only one of all his relatives.

Q. Was she the mother of this defendant? A. Yes; the mother of the defendant.

Q. And at this time when he commenced to live with you, when this statement was made that you speak of, in which he stated that the relations between himself and his relatives was strained, he didn't especially mention Mrs. Whitney at that time? A. No; because his assertions up to that time had been that he had no relatives who cared for him or whom he cared anything about.

Q. He didn't mention who his relatives were? A. No.

Q. You didn't know how near they were or who they were? A. No; except three brothers and one sister. Whether they were all living he didn't mention, and I didn't know.

Q. During all the time that the Doctor resided with you was it his habit, as you know, to correspond with Mrs. Whitney or wasn't it? A. I don't know that.

Q. Do you know that Mrs. Piper wrote family letters to Mrs. Whitney? A. I suppose that Mrs. Piper corresponded with Mrs. Whitney from the fact of a letter being found in the debris
451 left by Doctor Thomas after he had taken away the Doctor's things from the rooms, which was from Mrs. Whitney, and in which she stated that she had not heard from them for such a long time and asking the Doctor the reason that Mrs. Piper had not written. This was many months after Mrs. Piper had died.

Q. You didn't know of the friendly relations that existed between Doctor Piper and Mrs. Whitney while they lived with you there in

the P Street house and Corcoran Street house? A. No; I did not. The relations were never spoken of at all.

Q. Did Doctor Piper furnish you at all with a list of his property? A. No; he stated that he had a piece of property in Chicago, upon which there was an apartment house built, and he had also deposited there $20,000 in cash.

Q. Never made any memorandum or writing stating what his property consisted of? A. No; but I knew this to be a fact about the $20,000 deposited in Chicago, as I went there myself to get it from the safe deposit. He stated, also, that he had this apartment house there, which he valued at about $10,000, and also nine or ten thousand dollars which he was to receive from the Sharon estate and some other money; I don't remember the exact amount. These he stated to me after he had come to live with us and the relations were established between us.

Q. How long after the relations were established between you? A. I don't remember.

452 Q. After you moved into the Corcoran Street house? A. Oh, no; before that time. When the Doctor came to live with us there was communicated to me by him every nature and kind of business pertaining to himself and to his finances. He made me his confidant—consulted me upon all these matters; so, therefore, I was as cognizant of his possessions as it was possible for one to be.

Q. In one of the letters you filed from the Doctor, written by Mrs. Piper, she states that she is gratified that you have honored her by naming one of your children after her. You had named the babe after her and then advised her of the fact that you had so done? A. True, I advised her of the fact of naming the baby after it had arrived. Possibly, if it had been a boy, we might have named it after Doctor Piper, but, as it was a girl, we named it after Mrs. Piper.

Q. This was done voluntarily by you, and not at the request of the Pipers? A. I am not certain about that. I presume, though, that, as it was in the nature of a compliment, it would certainly look better to come from us rather than to be suggested by them.

Q. How many children have you now, Mr. Hay? A. We have three now. Five we have had; two we have lost.

Q. Will you be kind enough to give the dates of the births of those children? A. Ned, Jr., will be eighteen years old the 18th day of August coming; Julia is thirteen years old next November, and Paul is nine years old. I cannot record myself as remembering the dates of the births of these children. Mothers are more likely to remember that than fathers.

453 Q. You had at the Corcoran Street house at the time Doctor Piper commenced to live with you there two servants—a nurse for your children and the cook—as I understand? A. There was also a third one engaged in the P Street house—a boy or man servant.

Q. Was that prior to their coming? A. That was after they arrived there in the P Street house. At the time that they moved

with us, when we went into the Corcoran Street house, the nurse took entire charge of the younger children and assisted the dining-room servant some in waiting upon Mr. and Mrs. Piper. Besides this, we engage a man to attend to the steam heat.

Q. What did the boy do in the P Street house? A. Waited upon the table, put in the coal, cleaned the snow off in the winter, carried the market basket, and made himself generally useful.

Q. Did you have him there winter as well as summer? A. Yes; we had this boy in winter as well — in summer.

Q. What did you pay him? A. $10.00 a month.

Q. And you didn't have him prior to Doctor Piper's coming? A. No.

Q. How was it made necessary by his coming? A. It increased the dining-room and likewise the household work, so that Hannah (who was formerly the cook and afterwards became the nurse) took charge of the upstairs as the house girl in connection with her duties upon the children, and the boy was brought in as a waiter.

Q. You moved into the Corcoran Street house in August, 1888? A. Yes, sir.

454 Q. And Doctor Piper remained with you until August, 1892? A. Yes, sir.

Q. Did you have a man servant there during that entire period? A. We had a man servant there from the first of October until the first of May.

Q. During the winter months? A. Yes; because it was his duty to attend to the heating apparatus and to make himself useful in the dining-room.

Q. Was that his only duty, or did he have similar engagements in the neighborhood? A. No; this one was engaged to attend upon the steam-heating apparatus and to be a waiter in the dining-room.

Q. And he did nothing else? A. He did nothing else.

Q. Was he there all the time? A. He was there all the time; did nothing else.

Q. And during all the period of Doctor Piper's residence in the Corcoran Street house? A. Yes, sir; during all the time that heat was necessary. For a part of the time—for one winter I am quite sure; two winters, possibly—we made another arrangement, by which an expert attendant upon the Florida steam heaters would come in the morning, and during the day several times, and in the evening, having charge of the heating apparatus; the cook, being upon the basement floor, had acquired some knowledge of it in the meantime, and could give supervision to it in the absence of this man.

Q. What period did this extra arrangement cover? A. During the time necessary for heat. As the Doctor was of a very chilly nature, it was necessary to start the steam heat sometimes as early as the first of September.

455 Q. That arrangement covered all the years except the first that you were in that house, did it not? A. I don't remember that. I know that arrangement covered one winter, I am sure

of that; possibly it might have covered two winters, but I don't know which ones they were. It seemed very satisfactory, and the compensation was $8.00, and that saved the necessity of feeding a person and $2.00.

Q. When Dr. Piper was in the P Street house he had two rooms to himself? A. Yes, sir.

Q. When he was in the Corcoran Street — he had two rooms likewise, to himself, did he not, besides his bath? A. No; three rooms and the bath.

Q. What were the three rooms? A. On the second floor—his sitting-room and his sleeping-room; and the third room was a middle hall room, north front, where he could get a better light for his painting.

Q. The painting-room didn't require the services of the servant at all? A. Oh, no; except to have it cleaned once a week.

Q. Then, so far as Doctor Piper was concerned, he required no more attendance in the Corcoran Street house than he did in the P Street house? A. I don't know that he required any more attendance, but it required the attendance of a servant additional to what we would have required if we had been alone.

Q. You say that Doctor Piper was out of health when he was in the P Street house. What physician did he have attending him? A. Dr. Cook.

Q. Did he come in the capacity of a physician or in a
456 friendly way? A. As both.

Q. Was Dr. Piper ever in a condition so as to keep his bed while he lived with you? A. I don't remember of such a time.

Q. Was he ever so that he was confined to his house, so that he could not go out if he choose? A. I don't remember that.

Q. The Doctor was somewhat particular as to his food, you state. A. Very.

Q. He was dyspeptic? A. So he stated.

Q. And his particularity in regard to his food gave color to the statement, did it not? A. I judge that was the reason that he was particular about the food.

Q. He required a plain, simple diet, and to have good food, well prepared. Was not that the nature of his diet? A. That was the character of it, and that he got at all times.

Q. He was in the habit himself of purchasing rare fruits and such things as he would desire? A. I judge so. He was in the habit of getting fruit out of season—that is to say, strawberries when they were very expensive and the first of the season, and would bring the same to the table for his own use.

Q. Did the Doctor make you any compensation in money or in anything else for the time he resided with you in the P Street house? A. As I said in the direct examination, the Doctor never
457 paid to me personally one cent for anything whatever.

Q. Did he pay to your wife anything? A. Not to my knowledge did he ever pay to Mrs. Hay one cent compensation for anything whatsoever.

Q. Did he make to her any gifts of money? A. I never knew of him to give Mrs. Hay one cent as a gratuity or otherwise. The only money that the Doctor ever paid out to my knowledge for any services rendered to him while he was with me (except the little fees sometimes to the servants) was the payment to the boy that remained with him during the summer month that we were absent, when we were in the P Street house.

Q. How long were you away on your vacation? A. About a month or, maybe, a little more. We usually went away the first of August and returned about the first of September.

Q. And you took your nurse, of course, and the children with you? A. At that time we did.

Q. No one was in the house except the Pipers and this boy? A. Yes, and the cook.

Q. The Doctor supplied his own table during your absence? A. No; we supplied everything.

Q. Who did the marketing while you were gone? A. The cook, I think.

Q. Do you recollect whether or not the first summer you were in the Corcoran Street house you went away and your wife? A. I went away; she did not.

Q. How about the second summer? A. We may have gone at that time to Martha's Vineyard; that is where we spent our summer vacation sometimes.

458 Q. Do you recall how long you were gone? A. About a month.

Q. The Pipers remained in the house? A. Yes.

Q. How about the next summer? A. I suppose that was the way also; they never desired to go away; stated that they preferred to remain there in the quiet of the home, so we left the house open and the household affairs progressing just the same as if we were in attendance upon them. The servants were there.

Q. Mr. Hay, I will show you a paper and ask you to state whether you have ever signed that paper or whether it was prepared under your direction? A. I don't remember seeing this paper before, or a copy of it. It may have been a statement of the allowance to be made to Doctor Piper, which allowance of $50.00 a quarter to Doctor Piper went to make the payments of the sums that I had advanced in making additions to the house, by way of the steam heat, mantels, and etc.

Q. I want to know whether that paper does not embody substantially the arrangement between you and Doctor Piper in respect to the occupancy of the Corcoran Street house? A. I suppose it does, as to the allowance that was to be made to the Doctor in consideration of what I have stated. I do not know that such a paper was ever signed or that it ever became an actual agreement between us, but the conditions were carried out as in that paper.

Q. Then, I understand you to say, that substantially embodies the arrangement in respect to the occupancy of the house, and

459 the other provisions that are contained in that paper? A. No; I do not. I say that that embodies the allowance that

was to be made to the Doctor, conditional upon the advances made by me in the building of the house # 1512 Corcoran street.

A. You say that those provisions were carried out as stated in that paper? A. I think that the conditions as stated here were carried out as if it had never been touched upon in a paper of that kind or any kind.

Q. Exactly as the provisions there prescribed? A. No; there were many other things not mentioned in this paper, such as the care and attention necessary to the keeping and providing for Doctor Piper and his wife, which are not mentioned in the paper at all.

Q. So far as this goes, it was an expression of the arrangement? A. So far as that goes, it was an expression of the arrangement of the allowance.

Paper offered in evidence and marked "Defendants' Exhibit A."

Mr. HOEHLING: Said paper is objected to until it is in some way identified with the complainant or with the case.

Q. I now hand you a paper in this language: "Received of Dr. R. U. Piper, one hundred and forty-seven $\frac{13}{100}$ dollars in full for gas fixtures purchased of M. Kenney & Co. Boston Mass. Also $2.75 paid for cannel coal." Dated Sept. 8, 1888. In the margin there are the figures $147.13 and 2.75, making a total of $149.89, from which is subtracted $50, leaving a balance of $99.88. I ask
460 if that is your signature? A. My signature and my writing; yes.

Q. And that allowance of $50.00 is the first allowance for rent of the part of the Corcoran Street house which was occupied by you to Doctor Piper? A. I cannot say. I suppose that it may have been.

Q. Do you say it was not? A. I will not.

Q. Is it or is it not? A. I cannot say. I have very justly and honestly allowed to Doctor Piper such a sum as $50.00 a quarter.

Q. Why justly and honestly, unless it was due him? A. That I might allow him to feel that he was compensating me for the amount expended by me upon the building of the house.

Q. It was a matter then to simply gratify the feelings of Dr. Piper, and was not a matter of business? A. That whole arrangement was entirely to gratify the feelings and the desire and the wish of Doctor Piper rather than a matter of business.

Q. That $50 allowance was made in pursuance to the agreement and understanding had between you and Doctor Piper in regard to the occupancy of the house? A. I will not say that it was so.

Q. Then, it was made what for? A. I don't remember. It evidently was made for the reasons I have stated before.

Paper offered in evidence and marked "Defendants' Exhibit B."

Q. Was the balance that is spoken of there, $99.88, paid?
461 A. Possibly to me.

Q. Do you know whether it was or not? A. I don't. If it was, it was by check, and no doubt the Doctor has it.

Q. I hand you a paper. A. It is a check calling for the balance, and no doubt is as stated in accordance with the receipt given.

Q. Is the endorsement on the back yours? A. Yes; my endorsement, all right.

Paper offered in evidence and marked "Defendants' Exhibit C."

Q. I now hand you a paper in the following language, dated November 1st, 1888: "Received of Dr. R. U. Piper the sum of fifty dollars on ac. of mantels and fireplaces in 1512 Corcoran St. N. W." Is that your signature? A. My signature, my handwriting.

Q. What do you mean by that? Was it in pursuance of this arrangement that you gave him that receipt? A. Undoubtedly, it seems that it was in pursuance of the allowance.

Q. What do you mean by allowance? A. I mean that in consideration of the fact that I had furnished certain amounts in the finishing of house 1512 Corcoran street, that at the end of each quarter that I was to pay to Doctor Piper, by receipt, the sum of $50.00, and I think that such an arrangement continued throughout.

Q. You simply gave him a receipt for $50.00 and it was credited on the amount that was due you from Doctor Piper on account of mantels and fixtures? A. I don't know that it was credited. I know that the receipts were given.

462 Paper offered in evidence and marked "Defendants' Exhibit D."

Q. Also the following: "Received of Dr. R. U. Piper the sum of fifty dollars on account of mantels in house No. 1512 Corcoran street," dated Feb. 1st, 1889. Is that your signature? A. Yes; that was given under the same conditions as the other.

Paper offered in evidence and marked "Defendants' Exhibit E."

Q. Also one dated May 1st, 1889: "Received of Dr. R. U. Piper the sum of fifty dollars on ac. of mantels at No. 1512 Corcoran St." Is that your signature? A. Yes, sir; given under the same conditions.

Paper offered in evidence and marked "Defendants' Exhibit F."

Q. Also one dated August 1st, 1889: "Rec'd of Dr. R. U. Piper the sum of fifty dollars to be applied on ac. of mantels in house No. 1512 Corcoran street, Washington, D. C." That is not signed. Is it correct? A. That is the fifth payment, so it states. That wasn't signed. It is in my handwriting, and I suppose it is correct ever without the signature.

Paper offered in evidence and marked "Defendants' Exhibit G."

Q. Another, dated November 1st, 1889: "Rec'd of Dr. R. U. Piper fifty dollars, quarterly payment on mantels in 1512 Corcoran St." Is that your signature? A. Yes; under same conditions.

463 Paper offered in evidence and marked "Defendants' Exhibit H."

Q. Also one dated February 1st, 1890: "Rec'd of Dr. R. U. Piper the sum of fifty dollars ($50.00), quarterly payment due on the account of bill for mantels, etc." Is that your signature? A. Yes; under same conditions.

Paper offered in evidence and marked "Defendants' Exhibit I."

Q. The money that you expended on account of the mantels and on account of the chandeliers and the steam-heating apparatus was all settled or adjusted between you in this way? A. I suppose that it was well adjusted. The Doctor was punctil*l*ious in those things and insisted upon having some settlement by which he could feel that he had paid for everything on the house. As I testified in the direct examination, there was received from the Doctor a certain sum upon the steam heat and the balance was adjusted by these quarterly allowances, by these receipts.

Q. What you expended on account of that house was reimbursed to you in that way by Doctor Piper? A. I judge that it was settled in that way. There was never any question of money between us, nor would there have been in any way, as I never took any money from Dr. Piper for anything whatever, nor did I take any or intend to take any in the settlement of anything.

Q. After the arrival of Doctor Piper in the P Street house did you have any spare chambers? A. We did not.

464 Q. Did you have any in the Corcoran Street house? A. We had two spare chambers.

Q. How many hall rooms are there in that house? A. Two.

Q. What size? A. Seven by eight, and one small room that was to have been a bath-room, but the bath-tub and plumbing arrangements having been left off the contract in order to lessen the price, it was used as a storehouse for Paul's toys.

Q. It was Doctor Piper's idea to have a furnace in the house instead of the steam heat? A. That was his idea, that was the original contract.

Q. And it was changed at my suggestion, because I was to furnish the coal, and I was advised that steam heat was more economical. I thought that I could stand the difference between the original contract of about $300 and the cost of the steam heat, which was about $1,000, to have the change made, so I took the responsibility of having the steam heat put *i*t and paid the additional cost myself.

A. And it was reimbursed to you in this way by these quarterly payments under the arrangement as to the occupancy of this house, was it not? A. It was allowed to the Doctor at $50.00 a quarter in pursuance of our agreement to do so.

Q. The Doctor furnished his own coal for his Franklin stove in his own room? A. I think that he did; it took about half a ton for a season. I don't remember of having paid for that; about $2.85 was the cost of it.

465 Q. I suppose the Doctor, when he retired, extinguished the gas in his rooms? A. I cannot swear that, as I never slept in the room with Doctor and Mrs. Piper, but I am quite sure the Doctor didn't blow it out.

Q. Doctor Piper and his wife went to Saratoga in the summer of 1892; since then you have been in possession of the Corcoran Street house; yourself and family? A. Yes, sir.

Q. There is a copy of a lease attached to the deposition of Doctor Piper, the lease of which that is a copy was signed by you? A. I think so; yes, sir.

Q. And you paid the rent, as provided by the provisions and terms of that lease, up to within the last quarter? A. Always paid to Doctor Piper the allowance as provided for by the lease or paper entered into between us.

Q. At the time he sent you that lease, or Doctor Thomas sent it to you, there was an acquittance or release prepared, settling all accounts between you and Doctor Piper; did Doctor Piper himself ever say anything to you about that or ever demand a settlement of that sort? A. I cannot swear for what was done while Doctor Piper was out with Thomas. Mr. Thomas was a designing man, endeavoring to obtain from Mr. Piper not only this property, but likewise the property in Chicago, and he did succeed in partly getting some of his real estate for the time being and considerable of the Doctor's actual cash deposits, as has been set forth in the direct testimony. The correspondence regarding this lease and all concerning it was by Dr. Thomas, and whether he was authorized by Doctor Piper or not I do not know. The Doctor in his own letter from Newport complains that he was out of his mind while in Chicago, and
466 that he was forced to do many things that he would not otherwise have done; this demand for this paper was made by several papers written in the handwriting of Thomas, purporting to be at the dictation of Doctor Piper. There was no necessity of signing a lease or any paper purporting to be a lease concerning this property. I never denied the use of the property to Doctor Piper, and as I could not get him to come to his home and occupy his rooms in this house and not knowing what might be done to dispossess me of the property while he was under the influence of Thomas, I signed this paper for the purpose of not only protecting myself, but also to protect Doctor Piper.

Q. The title to that Corcoran Street property was then in Doctor Piper and always has been up to the time it was conveyed to Miss Whitney? A. The title of the property has never been in any other than Doctor Piper; his life estate in it has never been questioned, and never would be by myself.

Q. What do you mean by his life estate? A. That the use and occupancy of the property Doctor Piper should and would be entitled to during his life; but in accordance with his agreement and the conditions of his living with me and mine, at his death the property was then by devise to belong to me.

Q. The Doctor had a right to dispose of it during his life? A. The Doctor had a right to dispose of the life estate in it; there is no denial of that; but he had no right to part with his property so as to prevent him from carrying out the agreement that he made, to devise by will the property to me, because of the condi-
467 tions and covenant and agreement entered into by and between us.

Q. When you took possession of the Corcoran Street property Doctor Piper took possession of his rooms and you moved over there. There was no formal delivery of the possession of the property to you, was there? A. The formal delivery of the property was the handing of the keys to me by Doctor Piper. He kept one key only for himself and four others were handed to me. I furnished the house throughout, from top to bottom, and partly furnished the Doctor's rooms, and when we moved the Doctor went into his rooms, or the rooms provided for his especial use, and we went into the balance of the house, not separate, but as one family; but it not being supposed that we were all going to live together in one room, we naturally separated and occupied the whole house.

Q. You superintended the moving from the P Street house to the Corcoran Street house? A. I imagine so. I am not much given to such domestic duty or domestic work. If I did, it was to my credit.

Q. It wasn't done by Doctor Piper; only such things as were in his own room in the P Street house? A. No; the Doctor had nothing whatever to move except himself and his wife and a few books and some painting material.

Q. What did you furnish in the Doctor's rooms? A. I cannot tell. I think we put in a dressing-case, some tables, chairs, and some hangings. The Doctor furnished the sitting-room and the bed.

Q. He furnished the carpets and put in everything except the dressing case that you have mentioned, did he not? A. I
468 am not quite certain about that; the bedding and bed linen was furnished by ourselves, and everything like that.

Q. The balance of the house was furnished by yourself? A. Yes sir.

Q. The Doctor didn't dictate to you what you should buy or what you should furnish? A. Not at all. He seemed to take great pleasure in seeing it furnished and was pleased when it was completed.

Q. What rent did you get for the P Street house after you had moved out? A. When it was rented we got about $50.00 a month. I think it was vacant a year after we moved into Corcoran street, and then rented a year, vacant a year, then rented a year, and is vacant now. The rent of that house is what really brought about the matter of the agreement between us as to the allowance.

Q. You considered the rental of the P Street house at $50 a month as a good rent? A. It was all we could get. It has always been a losing piece of property; never a profitable investment.

Q. Did you know of Doctor Piper's making a will other than such as have been offered in evidence here prior to his departure for Saratoga, in 1892? A. I did not.

Q. Do you know it now? A. We found, after we went away, a will that he made and left among his papers, which is filed in this cause.

Q. I don't refer to that; I refer to another will, in which he made other provisions and dispositions than in any of those which

you have filed in evidence here. A. I don't know of any such a will; I never saw it; I heard that such a will was made.

469 Q. Do you recollect when, at one time, the Doctor desired to send young Edwin away to school? A. I remember the subject of sending Ned to school at some time in the future was spoken of by the Doctor, but when the subject was discussed Ned was only eleven years old, and of course it could not be supposed that he could go at that time.

Q. Your wife was opposed to it? A. There was no definite arrangement made at that time; it was only spoken of; therefore nothing was said at which an objection could be made. The Doctor was very much interested in Ned, Jr.; taught him some in mathematics, and said that he would like some time to send Ned away to school.

Q. Was your wife opposed to his so doing? A. I don't remember that she was. Of course, she was opposed to sending him away at eleven years old; he was too young to leave home.

Q. Didn't she and Doctor Piper have an altercation about it? A. Oh, no; altercation is a big word to use and implies so much. As to any unpleasant controversies between Mrs. Hay and the Doctor, such things never took place. Once in a while, when they didn't agree, why, they would reason it over together.

Q. They had spells of that sort? A. No; it was not spells. The Doctor sometimes would suggest unreasonable things, and Mrs. Hay would oppose it, and that would settle the matter; but as to altercations, such a thing was never known in our home. The Doctor and Mrs. Hay differed on many subjects.

470 Q. In this matter of the school question, didn't you come in as a mediator between them and pour oil on the troubled waters? A. I don't know about that. I always have an abundance of oil on hand, and I could use it at a moment's notice, not only between them, but at any time and any place, between any parties. That is my nature; I cannot help it.

Q. You went to Saratoga five times; will you examine, please, that check and state whether it is the signature of Doctor Piper? A. That is a check made and signed by Doctor Piper in my presence, handed to me, at Saratoga, for the purpose of paying sundry debts that had accumulated in the stores, attendant upon the death of Mrs. Piper.

Q. Was it all expended for such purposes? A. All expended for that purpose, and, if I mistake not, there was more than this; I paid the undertaker also.

Q. From money furnished by Doctor Piper? A. All furnished by Doctor Piper at that time.

Q. Your hotel bills were paid for by Doctor Piper? A. I suppose so, because the bill was not presented to me; but I was but two days there, and I believe the rate for transient boarders at such a place is about $2.50 a day, and it was no doubt paid in the bill rendered against Doctor Piper by the proprietor of the hotel.

Q. Doctor Piper had money with him at that time? A. The Doctor must have had some little money with him, but his account

was in the Central national bank here. I got this check cashed at the bank in Saratoga.

Check offered in evidence and marked "Defendants' Exhibit J."

471 Q. Did he pay you for your travelling expenses to and from Saratoga? A. Whether he did at that time I am not prepared to say, but he did not at any other time. It may have been that, as I was making preparations for the shipping of Mrs. Piper's remains to the city, that I also bought a ticket for myself.

Q. The Doctor was provided with funds, so that you could make all such provisions? A. The Doctor always had plenty of funds at his command, as he kept an account at the Central national bank in Washington; but the checks that he gave me there I cashed at the Saratoga bank.

Q. So that the expenses of your Saratoga trip may have been paid out of the Doctor's money? A. Might have been, as I had at the time of Mrs. Piper's death some of the Doctor's funds, given to me by him, with which to settle all bills pertaining to the removal of her body.

Q. So there is really nothing due you on account of that trip to Saratoga? A. Don't mistake me in this. The answer to the above question is that the ticket for that one trip to Saratoga may have been paid out of the funds that I held of the Doctor's.

Q. To what trip do you refer? A. The trip at the time of the death of Mrs. Piper when I brought the remains home; but none of the others.

Q. You say none of the others were paid for by him? A. I don't remember that any of the others were paid for by him.

472 Q. Do you recall how much that amounted to? A. No; I do not.

Q. When you went to Saratoga you always stopped at the hotel where the Doctor was? A. Once I stopped over night at another place, because I reached there early in the morning and did not wish to disturb the people. It was a private house more than a public hotel.

Q. And it was not a public hotel? A. It was titled "The Broadway house," but it was a family house and not public.

Q. How long did you remain there? A. Not longer than a day and a night.

Q. You hired both of the nurses that were in attendance upon Doctor Piper, or procured them, did you not? A. I am under the impression that I did; at least, I had them procured, as I was not personally acquainted with any one in Saratoga.

Q. Through whose assistance did you procure them? A. I really cannot say. A gentleman there—Dr. Reynolds—was very much interested in Doctor Piper and did much towards looking after his comfort.

Q. Was he one of the attending physicians? A. He was in the beginning, I understand.

Q. You brought Mrs. Piper's remains to Washington. They were not taken to her home after her decease? A. No; they were

not. The train was delayed, and we reached the station at eleven o'clock at night, and, as it took some little time for the undertaker to get them out of the train, he took them direct to his apart-
473 ment and *and* brought them the next morning to our home, and the funeral, as announced in the paper, was from there, services to take place at Rock Creek cemetery; the Rev. Dr. Harding conducted the services, and a number of Mrs. Piper's friends were in attendance.

Q. Were there any personal notices sent to the friends of Mrs. Piper residing in Washington concerning her death? A. I think there were no personal notices that I remember of sent to any one, except to Mr. and Mrs. Darling.

Q. She had numerous intimate friends here, did she not? A. No; she had not.

Q. None? A. Some. There was a notice in the paper inviting all friends to attend the services to be held at the vault.

Q. Did you notify any of Doctor Piper's relatives of the fact of her death? A. I am under the impression that I did.

Q. Did you notify Mrs. Whitney? A. I do not know whether I did or not; I cannot state that. I asked Doctor Piper whether he had give notice to any of those interested in Mrs. Piper, and he said that he had had the nurse do so, but fearing that she had not, I notified a few myself.

Q. Doctor Piper was greatly broken by his wife's death, was he not? A. Yes; it seemed to have a distressing effect upon him; more so than anything that had ever occurred in all his life while he was with me.

Q. You first met Doctor Thomas in Saratoga? A. No; it
474 seems to me that I was introduced to him in Chicago by Doctor Piper, when I first went to call upon the Doctor and his wife in 1882.

Q. You met him again at Saratoga? A. I met him again at Saratoga. When I went to see if the Doctor would not come home with me, I was apprised of the fact that Dr. Thomas had come from Chicago. Doctor Piper was very much displeased, and was very frantic in his endeavors to get some of us to send Dr. Thomas away, stating that he would drive him crazy to have him there. It was that oil on the troubled waters again that caused me to plead with the Doctor to allow him to remain, the result of it being that Doctor Thomas has succeeded in taking much from the Doctor and robbing him to a very large extent.

Q. Did Doctor Piper at this time entertain hostile feelings towards Thomas? A. I really cannot say as to that.

Q. He didn't want to see him? A. He didn't want to see him; he wanted everything done to get "that man," as he titled him, away from the place.

Q. Was Doctor Thomas then in charge of his property in Chicago? A. That is what Doctor Piper claimed; that Doctor Thomas was the agent for the renting of the house in Chicago.

Q. And it was at your solicitation that he finally consented to see Thomas? A. Yes; I thought that Doctor Thomas had come as a

friend, a long distance; I didn't know him, and I prevailed upon the Doctor to see him.

475 Q. Was the Doctor at that time suffering with the grippe, or anything of that sort? A. The Doctor had been ailing, as was usual with him, all the fall, and the attendance of Mrs. Piper upon him rather broke her down and brought on this gastric fever which caused her death. Whether it was the grippe the Doctor had, I am not prepared to state. He seemed to be laboring under hallucinations—that is, with all except me; I must confess that I never noticed it, because he was very quiet when I was with him, and he was continually talking about the Sharon money, and that I should get it.

Q. You went there for the purpose of getting him to return to Washington? A. As I was the nearest one on earth, it seemed, to Doctor Piper, and his home being here in Washington, at my home, I felt it was my duty to bring him here, as any son naturally would look after a father.

Q. Your going to Saratoga after the death of Mrs. Piper was on your own motion; you went for that purpose voluntarily, didn't you? A. It was voluntarily done, as were all my other acts concerning Doctor Piper. Knowing that he was there sick, and that when I would go he would postpone his coming, and as I could not afford to go there to stay and give up my business, in order to remain by his bedside all the time, it caused me to return to Washington, with the promise of returning again to him in a week, so that at that time he would be stronger and physically able to come home with me. That was why I went, and why I came, and why I made these trips.

Q. What was the condition of Doctor Piper at the time he made this will that you have offered in evidence, in Saratoga?

476 A. Perfectly rational; of a sound and disposing mind.

Q. His hallucinations didn't touch you at all? A. There were no hallucinations at that time. They didn't begin at all until after his wife had passed away. He reasoned that he preferred to make this will at that time and in that manner, because he had made a will after leaving Washington which gave to his wife the property, with instructions to make a will devising the sum of $15,000 to me; that as his wife could not recover that he desired to make a will in which he devised all of his real estate, wherever situated, especially mentioning the Washington property, and likewise the Chicago property, to me, with a bequest to his sister, Victoria Whitney, and some others that he wished to remember in a small way.

Q. When the will drawn by Col. Cook was made, it was suggested that a deed be given by Doctor Piper in place of the will. At whose suggestion was that? A. I think it was suggested when we talked the matter over; may have been suggested by me that possibly the better way of carrying out his desire and agreement with reference to his property, and especially to this house 1512 Corcoran street, was to deed it directly to me at that time, and that would secure the property beyond any doubt.

Q. He declined to do that, giving his reasons? A. He stated that he would prefer to make a will; that he did not believe in one parting with his property during his lifetime and for further reason that *he* would be better for Mrs. Hay and the children and for me if he retained the property in his own name, as he could go upon a bond for me, or if I became embarrassed financially
477 the property would be in his name and could not be disturbed, and that he could better care for Mrs. Hay and the children if I was taken away.

Q. Was it your understanding in respect to this original contract or agreement that you speak of that if you and your wife should have died the following month that this property would be left to your children? A. That was the understanding. That was the statement made by Doctor Piper himself, and was one of the terms of the agreement. He stated in so many words that if "Edwin" should be taken away that he would take care of Mrs. Hay and the children, and that if she were taken away that he would likewise care for and rear the children, and at his death leave the property to them.

Q. When did you first ascertain the character of Dr. Thomas? A. I ascertained the character of Dr. Thomas from his conduct at Saratoga in taking Doctor Piper away from there and carrying him to Chicago.

Q. When did he take him from Saratoga? A. Some time the latter part of January, 1893. I was, indeed, greatly surprised when I learned of it, as Doctor Thomas stated to me the day I left that "I know, Mr. Hay, the relations existing between you and Doctor Piper. I know that his home is with you, and you may rely upon me that if I am permitted to remain and watch over the Doctor that I will bring him to your home as soon as he is well enough to come," and it was but a few days after that that I received both from the proprietor of the hotel and from the nurse communications telling me of the shameful conduct, as they expressed it, of Doctor Thomas, which letters I will file as exhibits here if I have
478 not done so. That is the first time I learned of Doctor Thomas' true character, which afterwards proved to be confirmed by his conversation concerning Doctor Piper when I was there, stating that it was all a matter of business with him, his keeping Doctor Piper in Chicago. I did not know how dastardly this individual had acted until I was informed by Doctor Piper himself as to his attempts to rob him, to filch from him his property and all of his possessions.

Q. When did you first meet him in Chicago after Doctor Thomas had taken him there? When did you first go to Chicago? A. I don't remember that.

Q. At whose suggestion was it, at your own? A. It was at my own volition, and following the advice of Mrs. Hay, because the Doctor had written for me to come and bring him home.

Q. You made two trips to Chicago? A. As I remember; yes.

Q. The second trip you made with your wife, do you recollect? A. I do remember that Mrs. Hay was with me upon that trip, be-

cause it was during the World's Fair, and we made the trip advantageous for the double purpose of seeing the great exposition and at the same time of getting the Doctor, if possible, to come home with us.

Q. Did she visit Doctor Piper while she was in Chicago? A. I think she did not, as I did not know whether it would be possible for me to gain admission to the Doctor's presence.

Q. How long did you remain in Chicago at that time? A. Four days.

479 Q. How long had you been there when you called on Doctor Piper? A. About four hours.

Q. Your wife was with you all the time—she was in the city? A. She was in the city; yes; but the distances in Chicago are very great, and she was at the fair, and the Doctor lived down upon the lake.

Q. Then this second trip that you speak of was made on pleasure as well as incidentally to see Doctor Piper? A. It was especially to see Doctor Piper and incidentally to see the exposition.

Q. Did you have business that took you farther West than Chicago at the time you made this first visit? A. No; I went directly to Chicago for this purpose and for nothing else.

Q. Did you communicate with Mrs. Whitney concerning the condition of Doctor Piper and the fact that he had been spirited away from Saratoga? A. I communicated that fact personally to Miss Whitney.

Q. When? A. Just before she went out to take him to Newport. Miss Whitney came to inquire about the Doctor, and was surprised at the tidings I gave her of his being under duress in Chicago and kept there by Dr. Thomas, and she stated that she would go there. I thought that it was a very lovely thing to do; that possibly she would have some influence over him, and especially some influence in defying Thomas. She thought that she might get him to come home here to Washington.

480 Q. Did she so express herself, that she would get him to come here? A. That was her intention; that was the way she expressed it to me. I have no reason to suppose for a moment that she thought that she could get him to go to Newport, and I was much surprised when I received a letter stating "I have reached here safely with my niece, and will make a short visit and then come home." I was very much pleased at the Doctor's deliverance, for such it seemed to me to be.

Q. Have you that letter on file? A. I think it is; yes.

Q. At your visit to the home of the defendant Miss Whitney, in Newport, you were shown a deed of trust that was put upon the property by Dr. Piper in favor of Thomas, were you not? A. No; I do not remember of having ever been informed at all of any deed of trust on this property in Washington; in fact, I am quite certain I never knew of the deed of trust given to Moore by Doctor Piper until the beginning of this case.

Q. Did you not take a copy of the deed of trust when you were at Newport? A. I do not remember of having been shown any

as to this property. I think that Miss Whitney had a copy of the deed of trust embodying the property at Chicago.

Q. Did you take a copy of that? A. I don't remember that I took a copy of it; I know that it was in my hands; that I saw it.

Q. And read it? A. Oh! I undoubtedly read it, I suppose. That was the subject of our business interview, for the purpose of
481 bringing proceedings to set aside these things and to endeavor to right the Doctor and to have returned to him such property as was taken by Thomas.

Q. Don't you recall, in the conversation that took place in Mrs. Whitney's house at Newport, between yourself and Doctor Piper, while Miss Whitney was present, that the fact of the deed of trust covering the Washington property was then disclosed to you? A. No; I cannot remember that I was informed of that fact or that it it was discussed.

Q. You knew what it contained? A. I am not prepared to state concerning the contents of the deed of trust from Doctor Piper to Moore at that time. I knew this, that we were discussing the affairs with a view to bringing proceedings, and that Doctor Piper had given certain trusts to one Moore, Thomas being the beneficiary under the trusts; but it does not occur to me that the impression was made at that time upon my mind that this house was included; I thought that it only referred to the Chicago property.

Q. Do you recall that when this fact of the Washington house being included in the trust was made known to you that you remarked, "Oh, the villain"? A. If such a thing had been expressed at that time I might have said "villain" or "robber" or some such term which it would be right to apply to such a man, but I must confess that I do not call to mind the fact that it was brought to my knowledge that the Corcoran Street property was included in that trust. However, even if it was, our purpose was to begin proceedings to put back the Doctor in the position he was in
482 before he had entered into any of these conditions or agreements with this Thomas.

Q. Your visit to Newport was the same year the conclave of the Masons at Boston, wasn't it? A. Yes; I think it was, because I came back from Newport to Providence, Rhode Island, and in the week after that time I attended the Knights Templar conclave at Boston.

Q. You are a member of that body? A. Yes.

Q. And your visit to Newport was times so as to take in the conclave? A. No; it was not times particularly for that, as I went to Newport, if I remember correctly, more than a week ahead of the conclave in Boston; but my visit to Newport was in response to the Doctor's letter and his invitation to come, and it happened very nicely that it was the conclave year, because it gave me a very pleasant vacation.

Q. Did you not while at Newport consult the Doctor and solicit him to give you a deed for that Corcoran Street property? A. No; I never did that.

Q. Didn't make a proposal like that to him? A. No; I do not

remember ever having suggested such a thing to the Doctor. If I did, it was certainly the best and right thing for the Doctor to do.

Q. But you did not suggest it? A. No; I have no recollection of suggesting such a thing as that. If I did, it was in interest to Doctor Piper as well as myself.

Q. The Doctor didn't authorize you to take charge of the litigation that he was about to undertake in Chicago, did he? A.

483 Yes; the Doctor sent for me for that purpose, explained what he wanted, and told me to go ahead and make the arrangements for the purpose of bringing this suit. In pursuance with such instructions, I did go ahead; went not only to the expense of telegraphing, but sent special delivery letters so as to bring the matters before Hogan and Case, in Chicago.

Q. That was the firm that you retained? A. Yes; Hogan, Case and O'Donnell.

Q. Did you know personally Mr. Hogan of that firm? A. Yes; I knew him well.

Q. He was at that time in Europe, was he not? A. The communications were with Mr. Case.

Q. You knew that Hogan was in Europe at the time? A. Yes, sir; but to return home shortly afterwards, as he was expected on the 27th of August.

Q. Did you ever meet Hogan before he went to Europe? A. Yes.

Q. Where? A. In Chicago.

Q. When? A. Upon several occasions.

Q. Upon your visit to Newport wasn't it the understanding between yourself and Doctor Piper that there was to be no expense incurred unless he so authorized you? A. So he wrote me afterwards, that he did not wish to incur any expense whatever in the matter, and that they must take it as a contingent affair.

484 Q. But wasn't that the understanding in Newport at the time of your visiting him? A. That was not the understanding, because nothing was said about that. He was anxious to have proceedings instituted for the purpose of getting him out of this difficulty, but afterwards wrote that he authorized no expense whatever in the premises.

Q. At that time had you incurred any expense? A. I never incurred any expense whatever. I went out to Chicago and had an interview with them, and told them that the Doctor did not wish to incur any expense in the matter, and that they must take it as a contingent affair.

Q. At that time you had this interview in Chicago did you have business farther than Chicago? A. I think at that time it just occurred that I was going beyond Chicago, and I went ahead, so that I might have an opportunity to consult with these attorneys, and appointed the time in advance, and devoted the afternoon for the purpose of giving them the exact facts and looking up the law in the case.

Q. Was not that occasion the first time that you ever saw Hogan? A. No; I had met Hogan three years before.

Q. In Chicago? A. In Chicago.

Q. Thomas was a little jealous of your influence with the Doctor, I suppose, wasn't he? A. I suppose naturally he must have been, as the Doctor told me afterwards, and also wrote to me from Newport that Doctor Thomas was continually trying to influence
485 him (Doctor Piper) against me, going so far, as the Doctor states in his letter, to say that "if you (Doctor Piper) go to Washington the Hay family will poison you." That looks very much like influencing one person against another or attempting to do so.

Q. I submit to you some letters that purport to be written by you in 1892, 1893, and 1894 to Doctor Piper. They bear date January 7, 1892, January 18, 1893, July 10, 1893, August 5, 1893, October 20 and December 30, same year, January 13, 1894, and ask you if the signature is yours on these letters. A. Those are all mine.

Q. Also letters dated 1895, July 15, September 12, September 14, October 7, October 28, November 1, November 5, December 14, December 22. A. Those all bear my signature; some are in my handwriting.

Q. Also in 1896, February 6, March 7, April 1, June 1, September 30, October 30, November 11, December 23, and December 31, and ask if the signatures are yours. A. Those are all my personal letters to the Doctor, some written by me, and others dictated by me; all signed by me.

Q. Another, January 12th, 1897. A. This letter dictated and signed by me.

Q. All of these letters were sent in the regular course of mail to the Doctor? A. Undoubtedly, as he received them.

Q. Do you recollect what the cost of these lots were in Corcoran street? A. I do not; I think about $6,000.00.

486 Q. What did it cost to build that house? A. The contract was between $12,000 and $13,000.

Q. Did it run in excess of that? A. With the steam heat and the mantels and the gas fixtures, which were extra; and also an additional $75.00 which I paid the contractor because of some change of plan.

Q. The total cost of the property was, then, about $21,000? A. About $21,000.

Adjourned to continue at another session, the time to be agreed upon.

SATURDAY, *May 29th*, 1897—10 o'clock a. m.

Met pursuant to agreement.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, Esq., counsel for the defendants.

Cross-examination of Mr. HAY.

By Mr. LEIGHTON:

Q. Mr. Hay, under date of January 7th, 1892, you write:

"I intend to start tonight for Saratoga to bring you home, but or your note today saying that you would not come until the Dr.

says you are able. So I must wait the call. Had he but studied your interest he could have advised it on Wednesday night that you should start with me on Thursday. It would be so much better that you could be at home. You are under a great expense there,
and here you will be under none. Here love will have some-
487 thing to do with ministering to your wants—there everything is a matter of business. Here are your friends, there strangers. Mr. Geo. Hine, whom both yourself, and dear Mother Piper's last letter, praise so highly, is your friend, and has your full interest at heart. He would do nothing but in kindness to you. When this great strain is over, and you get away from worry and the scene of so much sadness, you will realize that you have nearly become the victim of bold design on the part of those you call your friends there. You are mistaken when you say that I have set a watch over you to keep your friends away. You do wrong me. How can you forget my loyalty to you? How can you forget that dear dear Mother Piper, struggling to utter her thoughts, so difficult was her speech, when in her last words to me on earth said 'Edwin be kind to Doctor and take care of him.' That sacred message as from one in heaven—from her we loved so—placed ever a greater bond upon me to love and care for you. You won't let me think for you now in this your hour of weakness. You won't let me put my arm about you and help you home where there is good cheer and comfort and affection—but on the contrary prefer to remain where conspiracy did its work in so many many ways. Oh! Doctor please let the light come to you—see as I have seen and know the truth. In all the world mine is the arm for you to lean upon. Did it ever falter in its duty. Did you ever express a wish that I did not gratify if in my power. Why then should your faith be shaken at all. When I tell you all you'll realize and understand."

You had instructed the nurse whom you had employed for Doctor Piper not to admit any one to his presence other than his physician and the hotel-keeper? A. Yes. I instructed the young gentleman who was the nurse to be very watchful and very careful and to allow none to enter except the physician and those about the house in attendance upon Doctor Piper. The reason I did this was because there was a conspiracy between the former nurse (a woman) and an attorney in Saratoga for the purpose of obtaining from the Doctor money, as I was afterwards informed, because this attorney would go with the nurse, and for every visit, like a physician, he would make a bill for so much. I think that they went so far as to make a codicil to his will giving the nurse $15,000 or some amount of money; so
therefore I took the precaution, for Doctor Piper's interest, to
488 see that these people did not approach him.

Q. Did you know of this prior to the instructions given to the nurse, or did you hear of it afterwards? A. I learned of it upon my return after having interred the remains of Mrs. Piper.

Q. You didn't know of it at the time you gave the instructions? A. I possibly knew of these things at the time I gave the instructions, but I did not know to what extent it had gone, and I en-

deavored to protect the interests of Doctor Piper by the instructions.

Q. When did you prevail upon Doctor Piper to see Doctor Thomas—subsequent to the giving of this instruction or prior? A. Oh, undoubtedly after the instruction was given.

Q. This letter bears date January 7, 1892. That should be 1893? A. Yes; 1893.

Q. From the wording of this letter, Doctor Piper at this time entertained suspicion in respect to yourself, as well as to other people, did he not? A. No; it never occurred to me that such as that was ever in his mind with regard to myself. There was never any reason for thinking that.

Q. Why do you say in this letter, "Why then should your faith be shaken at all"? A. The letter, on the whole, is filled with sentiment and likewise figures of speech (as has been suggested by counsel for defendants), and was written for the purpose of en-
489 deavoring to reason with and prevail upon the Doctor to cling to me rather than to anybody else.

Q. That was to remove some prejudice that was in his mind, wasn't it? A. No; I had not the remotest idea that there was any prejudice in his mind. If so, it had never been expressed to me by the Doctor, and I had no right to judge it from any of his actions.

All of these letters were identified by witness at the preceding session. This letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit K."

Q. Under date of August 5th, 1893, you say:

"You cannot imagine the happiness your own letter gave me this morning. You must know that I have a heart, that I possess affection, that you and Mother Piper—God bless her memory—for many years have shared that affection. It was awfully hurtful that without cause and at once you should change a relationship that was not formed in a moment, but the creation of years." * * * "I could not wrong you dear Doctor nor have I ever done so. I never did a wrong act in my life—surely I would not do so to you. I have shown more deference to your every wish than a son could—I have given to you more affection than a son could, and I do ask it in return. I am here ready to devote myself, etc."

What do you mean by that expression, "you should change a relationship that was not formed in a moment," unless the Doctor's sentiment towards you at this time was not as it was formerly? A. Doctor Piper, being in Chicago with the party mentioned in these proceedings—Doctor Thomas—I had not seen him; had doubts that my letters would reach him; had not heard from him, except through Doctor Thomas, and upon receiving a letter from him it inspired the answer you have just read to endeavor to prevail upon him to come to his home and have the same affection and the same relationship that existed prior to his leaving.

490 Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit L."

Q. In a letter under date of July 15th, 1895, you say:

"Indeed my dear Doctor, you know that I never allow any hitch in any of your business affairs, nor have I yet done anything not fair. I have been faithful to the letter to you in all the years of the relationship existing between us, and I hope to be so. All I ask is your trust and confidence;" and further on, "I will do all things right." Further on, "I am in the early part of August arranging for a little vacation—so if agreeable to you I'll get to you and will receive instructions from you in person."

Had the Doctor ever questioned your fairness of dealing with him in any way? A. If he had I never knew of it. In some of the communications he used the expression, "All things will be fair." These letters by me were written in this strain because the Doctor was away under the influence of others, and I always reminded him that his home was waiting for him here in Washington, and that I was ready to serve him as I always had been.

Q. Do you mean to say, Mr. Hay, that Doctor Piper never questioned your fairness or entertained suspicion of you in any way? A. Not that I ever knew. The only expression that I ever heard from the Doctor in any way whatever that was not in praise and love and affection were the expressions used by him when he gave his testimony in this case.

Q. This statement about your arranging for a vacation in August seems to indicate that you proposed yourself to go to see him at Newport, and that you went there at your own suggestion in the first instance and not at his request; is that so? A. No; it does
491 not seem so from the very fact that the letter is filed in this case requesting me to come.

Q. Was that after the Doctor had received this letter from you? A. No; because I received the first letter from the Doctor.

Q. How do you explain this statement that you suggested to him that you would call and see him, as you were arranging for a vacation? A. That as the time had arrived in the summer when it would be most agreeable to myself to leave my business and be away, that the time called "vacation" would be spent in the North, and that if that time would be agreeable to him *that* would be the time when I would call upon him at Newport.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit M."

Q. This seems to be only the last page of a letter, and I do not know the date. Is that your signature? A. Yes; a typewritten page, signed by me.

Q. In it you say:

"Did you ever in your life know such an unmitigated liar as that fellow. Pardon me for being so strong in my expressions of him but he and his family have tried so hard to injure me in your estimation that I feel it would be a sort of delight to be a party to this just punishment that must come to him."

Who did you speak of there as an "unmitigated liar"? A. I judge that it meant Doctor G. S. Thomas, of Chicago, and the part

of the letter that you have read is possibly in answer to the one from the Doctor in which he stated that Doctor Thomas told him that if he ever came to Washington that we would poison him;
492 therefore the expression, which was justly applied to the man.

Letter offered in evidence on behalf of defendant and marked "Defendants' Exhibit N."

Q. In a letter dated September 30, 1895, you say:

"Yours at hand—please be sure that I understand your wish and position in the matter—and while we will not move in the premises—it is necessary to be fortified by the knowledge of the facts." * * * "Now please don't interpose any objections when we begin as everything will be done for your interest." "Now don't worry and please have confidence."

In his conversations with you Doctor Piper, you say, had never shown any evidence of mistrust either in your judgment or in your conduct of his affairs. A. No; I think the Doctor had full confidence. I believe that he did think I should have collected the Sharon money earlier than it was collected, but when people don't pay it is impossible to collect.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit O."

Q. Under date of October 2, 1895, you say:

"You must not delay too long in your matter. We are ready to proceed when you are, and you must follow my advice. I know you hate trouble and worry but in this case you are only protecting your rights. We'll do the fighting. Have confidence and your property shall all be restored to you. So please advance the cause by allowing me to proceed."

This letter was in relation to the Chicago litigation? A. Yes, sir; all these letters in the early part of the Doctor's being at Newport were at and about the time of the institution of proceedings and concerned the Chicago matter.

Q. To your letter do you recall whether you had any re-
493 sponse from the Doctor? A. I cannot say about a response to that letter, but all the responses at first were to the effect of encouraging proceedings and my going ahead, provided that I did not incur expense to the Doctor. He informed me that he was making up a statement of all the facts so that we could form our bill properly, and then the letters changed entirely, and the next advice that I received was that I need not proceed any further; that he had placed the matter in the hands of ex-Governor Davis, of Maine, who had a correspondent in Chicago.

Q. Did the Doctor send you any letters except those that you have put in evidence in relation to this matter? A. Oh, I cannot say. We have received many letters, but whether all have been preserved or not I do not know.

Q. Did you ever receive any letter from him directing you to go ahead in the Chicago matter? A. I received from him verbal in-

structions to go ahead, and left Newport with that in mind and began immediately.

Q. You never had any letter from him instructing you to go ahead? A. I don't remember it stated "go ahead" in so many words, but I had instructions from him to do so.

Q. You preserved carefully all of the letters that were received from Doctor Piper during this time? A. I cannot say that. I say that we preserved a great many fortunately.

Q. You preserved all that you considered of any importance?
A. No; the letters were preserved by accident, and were
494 within reach at this time; but as to any intention on my part, I think I have been too careless about these letters.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit P."

Q. Under date of November 1st, 1895, you say:

"Your silence is quite embarrassing to me—as I cannot take any steps without hearing from you. The attorneys in Chicago are waiting also to hear from me. Now will you please advise me at once of your intention in the matter. I know you hate trouble but you cannot sit quietly by and see yourself so shamefully treated and robbed as you have been by this party. Do write concerning it."

That letter would seem to indicate that you had up to that time had no instruction from Doctor Piper in writing? A. I cannot really say. I know this, that I did not proceed in the matter, and that some person did, and that after a certain time the Doctor's letters all changed from my interest and continuance in the matter, and the subject was there dropped.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit Q."

Q. Under date of November 5th, same year, you say:

"Why did you not say that you did not have confidence in me to settle this matter, and that would have caused no embarrassment to me."

That was received after you received notice not to go ahead, wasn't it? A. I judge so, because I was chiding the Doctor a little for this dismissing me.

Q. You say further in this letter:

"It is not right from any standpoint, and you ought not to act so. I went to you in August and advised with you."

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit R."

495 Q. Under date of December 4th, 1895, you say:

"I incurred no obligations with Chicago parties for you to pay, so please don't let that worry you. All arrangement with me in matter was contingent—it was made with me only. We took no steps."

Q. That was in response to a letter from Doctor Piper advising you that the attorneys whom you had retained in Chicago had

charged him a fee of $250.00, I believe? A. No; it does not occur to me at all that such was the case. I think that the attorneys in Chicago had been consulted by Miss Whitney concerning some matters, and, with the degree of generosity that belongs to some Chicago lawyers, I suppose that — thought that as the case was concluded as far as they were concerned that they would make a charge to Doctor Piper. I immediately advised Doctor Piper that I had incurred no expense whatever; that there was no charge at all upon him; that they had no right to send a bill in any way whatever or for anything; that he need give himself no concern at all about it; that if services were rendered to Miss Whitney for which compensation was due, that I considered $25.00 amply sufficient.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit S."

Q. Under date of December 22, 1895, you state:

"It was necessary to go right, and to do so without delay. I told Messrs. Case and Hogan we could take no steps whatever without your consent so there has been no misunderstanding whatever. I still think though that you did not treat me right in not allowing me."

These parties, Case and Hogan, were the attorneys retained by you in Chicago? A. Yes, sir. The Doctor is a very peculiar individual, especially upon that subject, and no doubt this gave him some worry, fearing that I had incurred some obligation,
496 and it took several letters to explain to him that I had not done so.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit T."

Q. Under date of February 6th, 1896, you say:

"I of course cannot advise you to do anything that you do not want to do and you know best whether or not you want to spend any money in getting any testimony at Saratoga. I can assist all that is possible with me own knowledge of matters and propose to do so. It galls me very much to have to stand by and see that dastardly vill*ian*, who not only took you from me, but deliberately waylaid and robbed you, escape without some punishment in keeping with the crime. I should like to see him be, not only civilly, but criminally liable and hope sincerely that those gentlemen in Chicago will be quite successful in their efforts."

I suppose the person you refer to is Doctor Thomas? A. The person referred to as "vill*ian*" is Doctor Thomas. The "gentlemen" referred to were the counsel engaged in the case, I having been advised of their retention and requested to assist them all that was possible, not only by my knowledge, but by any other suggestion. This letter was assuring the Doctor of my willingness to do so.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit U."

Q. Under date of June 1, 1896, you say:

"It riles me exceedingly to know that Thomas will escape without criminal penalty. There are grievances that are even worse than dollars and cents being taken away from us. Things possibly that you cannot feel, but which I for you feel very keenly. Atrocities, committed by him, for which there is no redress at court."

To what do you refer in that letter by atrocities? A. That
497 is in the same tenor that prevailed at that time, same feeling against Thomas; atrocities against Doctor Piper and against myself.

Q. You know that Doctor Thomas was trying to get hold of the Doctor and use him for his own purposes and procure money from him? Was that your idea? A. That is the idea I intended to convey, and it was shown to be a fact.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit V."

Q. Do you know when the acquaintance of Dr. Piper commenced with this man Thomas; how long he had known him? A. No, sir; I do not. It was prior to the acquaintance of Doctor Piper and myself, because upon my first visit to Chicago I was presented to Dr. Thomas by Doctor Piper, who stated to me, "He is my agent and has charge of my house."

Q. Under date of October 20, same year, you state:

"I sent you a letter on the 27th day of September, giving you an account of the storm, and also send you a letter on the first day of October, with enclosure; to neither of these have I received any reply. I have observed also, of one further step in your affairs in the recording of the deed to Miss Whitney. I will not comment upon that at this time, but our relations are such that it seems to me that you might have consulted me upon the matter prior to taking such a step. In all of our relationship, I have done to you only what kindness and affection has prompted and have faithfully carried out my part of the sacred contract, and while I do not for a moment wish to come between you and your good sister, still there are tokens of affection between you and me which should not be slighted off."

That letter was written as soon as you discovered the recording of the deed to Miss Whitney? A. Yes, sir; I presume so.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit W."

498 Q. Under date of November 11, 1896, you say:

"There was a time when it was your pleasure to seek the advice and counsel of myself upon everything you did, and you never appealed in vain, and one thing is certain that no trouble or loss came upon you until after you permitted yourself to get away from such counsel and fell into the clutches and under the influence of that designing, unscrupulous, and dishonest party in Chicago." You continue to say: "This is the second attempt on your part to dispose of the property both here and in Chicago, so you had better

advise your niece of the exact situation. I say this in justice to you, to her, and likewise to myself. Of course, I do not suppose there will be any change whatever in our arrangements; I will hold the house as before, trusting to keep our arrangements agreeable to you in every particular."

"This is the second attempt, etc." Do you refer to the first attempt as being this conveyance in trust to Moore that is mentioned in these proceedings? A. Yes, sir; this second deed having been recorded.

Q. You say, "Fell into the clutches and under the influence of that designing, unscrupulous, and dishonest party in Chicago." Wasn't it by your instruction and by your counsel to Doctor Piper that he got in with Thomas at Saratoga? A. No; not to carry out a design or to so wrong Doctor Piper as was subsequently done by Doctor Thomas. I told him that the Doctor did not want to see him (Dr. Thomas), and he stated, "I know the relationship existing between you and Doctor Piper, and maybe I can prevail upon him to come to Washington, and if so I will bring him there." Mr. Thomas stayed at Saratoga, but I could not stay there to watch him; my business called me to Washington, and I had to leave.

Q. It was through your influence that Doctor Piper finally consented to see Thomas? A. I said to the Doctor that this gentleman out of kindness had come from his home, and that it was not
499 proper courtesy to him, an old friend, not to see him, and that he certainly should do so.

Letter offered in evidence on behalf of defendants and marked "Defendants' Exhibit X."

Q. Are you as correct in your statement of the increased cost of food after the arrival of Doctor Piper as you are in respect to the statement of the cost of gas used by you in the Corcoran Street house? A. Whatever statements I have made are correct; the amounts are approximated. I know that there was an increase in the grocery and market bills and the purchase of special dishes for Doctor Piper, and there was also a very large consumption of gas in the Corcoran Street house, as the bills presented each month would show. I kept no books or accounts concerning these matters.

Q. And you are speaking simply from your recollection? A. I am speaking from my recollection and from doing the substantial and practical part of it—paying for it.

Q. From whom did you purchase your coal while you lived on Corcoran street? A. From several parties—Burgess & Company and sometimes from Sells & Company, and another dealer up by 21st or 22nd street, whose name does not come to my mind at this moment.

Redirect examination.

By Mr. HOEHLING:

Q. Mr. Hay, I hand you a letter, dated at Chicago, July 6th, 1883, headed "Dear Son & Daughter," and containing the following:

500 "Thus you have given us the right to address you, and certainly we are both glad and proud to do so,—what a change the world would present if all its children would come to your standpoint; and why should it not be so? Certainly all would be much happier for such change."

At the bottom is the address "Mr. and Mrs. E. B. Hay, Washington, D. C." Closing with the following:

"With much love to you and yours; and kind regards to friends from Mrs. Piper and myself, I am very truly yours, R. U. Piper."

Did you receive this letter? A. Yes, sir.

Q. Is that Doctor Piper's signature? A. Yes, sir.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 67."

Q. I also hand you another letter, which, like the other, is in typewriting, under date "Chicago, March 7th, 1884," and addressed "Dear Son Edwin," and containing this statement:

"How glad we should be to see you all, daughter Florence and both the little ones, and all our kind Washington friends. With much love from Mrs. P. and myself, R. U. Piper."

At the bottom is the address "E. B. Hay, Esq., 1429 Pennsylvania avenue, Washington, D. C." Is that Doctor Piper's signature? A. Yes; I received that letter, signed by Doctor Piper.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. 68."

Q. I also hand you another letter, dated at Chicago, May 4th, 1893, addressed "Hon. E. B. Hay," containing the following:

501 "As soon as Dr. can get one or two matters of business attended to (evidently referring to Doctor Thomas) he is to come to Washington with me; so you may expect me at almost any time. Respectfully yours, R. U. Piper, G. S. T. Dictated."

And ask whether or not you received that letter. A. I received that letter in Doctor Thomas' handwriting.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. # 69."

Mr. LEIGHTON: Admission of this letter objected to because it does not appear that the dictation was inspired by Dr. Piper, and, from what it appears, it may have been the construction of Thomas, considering his character.

Mr. HOEHLING: At our last session of testimony I understand you stated that after that receipt or form of receipt had been sent you for execution, releasing all claim against Doctor Piper by you, that you had also received a letter asking why you had not signed it and returned it. I hand you now a letter under date "Chicago, July 9th, 1894," addressed "Hon. E. B. Hay," in which this statement occurs:

"I should like much to have the receipt which the Judge made for me, which I have requested several times. You see that I have

to get some one to write my letters for me. I may come to Washington if I am well enough this fall. Very truly, R. U. Piper, by T. Dictated."

I ask you whether that is the letter or one of them. A. That is one of the letters which I received in reference to that, and that is in Thomas's handwriting.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #70."

Mr. LEIGHTON: Objected to for the reasons given above.

Mr. HOEHLING: I hand you now a letter dated at Chicago,
502 Oct. 29, 1894, addressed "Dear Edwin," and signed R. U. Piper. Is that the Doctor's signature? A. That is Doctor Piper's signature and his handwriting.

Q. This letter speaks of Doctor Thomas coming to Washington to get certain things. Is that the letter that he presented to you when he came after Doctor Piper's things? A. That is the letter that he presented, requesting that some of his household things be turned over to Doctor Thomas. That is the time that Doctor Thomas went through the apartments of Doctor Piper and took the things out.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #71."

Q. I find a duplicate shipping receipt accompanying that letter, which recites a great many articles (books, boxes, furniture, and pictures, etc.). Do you know the source from which that receipt came, and what it is? A. That is a duplicate of the shipping receipt of the things sent at that time.

Q. That Thomas took away? A. Yes; I had him give me that as a matter of protection to myself, as an evidence that he had gotten the things.

Q. As a voucher? A. As a voucher; yes.

Receipt offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #72."

Q. I also hand you a letter dated at Chicago, June 9th,
503 1895, addressed "E. B. Hay, Esq., Washington, D. C.," "Dear Friend," and purporting to be signed by Doctor Piper. Is that his signature? A. Yes; that is his signature. The letter is typewritten.

Q. In this letter the following occurs:

"I am much obliged for your kind letter and kind invitation. I have not been well enough to come to Washington since my fall and scarcely been out alone, the Doctor being generally with me when I go. I think you should send me the tax receipts as you agreed. It is better for all of us that you keep everything square as per agreement. If anything should happen to me I would like to leave everything square."

Did you receive that letter? A. Yes, sir.

Letter offered in evidence on behalf of complainant and marked "Exhibit E. B. H. #73."

Counsel for complainant now hands witness fourteen letters, purporting to be from Mrs. Piper, and addressed to the complainant, Mr. Hay, as "Dear Son Edwin," and signed "Affectionately, Mother Piper," dated at Saratoga Springs, during the months of September, October, and November, 1892; also three letters to Mrs. Hay from Mrs. Piper, addressing her as "My Dear Florence," and signed "Affectionately, Mother Piper," from Saratoga Springs, under the dates of September 13, '92, October 4th, 1892, and November 21st, 1892; and witness is asked to identify the same and to state whether or not these letters were received on the dates as indicated by the envelopes.

A. Those letters were received; they are in the handwriting of Mrs. Piper, and were received by Mrs. Hay and myself.

504 Letters offered in evidence on behalf of complainant and marked "Exhibit E. B. H.," numbered "#74" to "90," inclusive.

Mr. LEIGHTON: The admission of *this* letters is objected to on the ground that they are irrelevant and immaterial, coming, as they do, from Mrs. Piper and cannot affect the rights of the defendant Richard U. Piper.

Mr. HOEHLING: Mr. Hay, I show you one of these last-mentioned letters, marked "Exhibit E. B. H. #87," and dated at Saratoga Springs, November 26th, 1892, "Dear Son Edwin" and signed "As ever, affectionately, Mother Piper." I will ask you if there is anything particular in connection with this letter which is impressed upon your memory; and, if so, what it is.

A. That is the last letter that Mrs. Piper ever wrote on earth to me. She was taken sick immediately; indeed, she was sick at the time the letter was written and speaks of it in the letter, apologizing for her handwriting.

Q. In the cross-examination, Mr. Hay, you were shown a check dated January 4th, 1893, for one hundred dollars, made by Doctor Piper, and there were certain questions by Mr. Leighton in relation to how you disbursed that amount and as to whether or not you paid your expenses of making that trip to Saratoga out of that amount. I now hand you a series of receipts, dated at Saratoga, January 4th, 1893, for various items paid, the bills being made out to Doctor Piper, and I will ask you to identify these receipts and state if you know what they are. A. These are the receipts for bills which I paid for Doctor Piper on January 4th, 1893, out of the amount cov-

505 ered by the check made to my order and given by Doctor Piper, bearing even date therewith, which I cashed in Saratoga. The amount of those receipts all together is $104.65.

Q. Then, as a matter of fact, the payment of these bills more than exhausted the check? A. More than exhausted it; yes.

Q. Your memory having been refreshed by a glance at the receipts and bills, please state whether or not any part of that $100.00

given you by Dr. Piper was used by you to repay you for the expenses of the trip. A. Not at all.

Bills offered in evidence on behalf of complainant and marked "Exhibit E. B. H." and numbered "91" to "95," inclusive.

Q. You were also asked on cross-examination whether or not you had ever heard of another will having been made by Doctor Piper prior to his leaving this city for Saratoga other than the wills that have been either introduced in evidence or referred to by you in your examination-in-chief, and your answer was that you heard of such will. I wish you would please state when you first heard of it and from whom. A. I heard of it accidentally from a gentleman in the city of Washington, Mr. Brainard, and learned of it about the time of the institution of these proceedings, in December, 1896, or January, 1896.

Q. Did or did not Doctor Piper, the defendant, at any time communicate to you the fact that he had made that will or such a will?

A. No; the Doctor never communicated to me the fact that
506 he had ever made such a will or that he had ever intended to do such a thing.

Q. You were present, Mr. Hay, I believe, at the taking of the deposition of Richard U. Piper, one of the defendants in this cause? A. I was.

Q. And I presume you heard the statements made by him in reference to the making of the will, if any was made, at Saratoga Springs? A. Yes, sir.

Q. I wish you to state whether or not at the time of making that will, about which you have already testified, at Saratoga Springs, or prior thereto, you in any way suggested to the Doctor that he make that will, or whether or not you induced him to make the will. A. I never suggested, influenced, induced, or requested Dr. Piper to make the will or any other document at any time, but especially there. The will was made by the bedside of his wife, *and* his urgent request and instance. He stated that as his wife undoubtedly would die, and as he had made provisions concerning her in a preceding will, that he wanted to make another so as to devise absolutely his property, and the will was thus made.

Q. I believe you stated that he, as a matter of fact, dictated the will. Is that correct? A. Yes; that is correct.

Q. Referring now to the time when Dr. Thomas came to Saratoga and desired to see Doctor Piper, who declined to see him, had you or not prior to that time met Doctor Thomas; and, if so, where?

A. I had met Doctor Thomas in Chicago some years prior
507 thereto, in 1882, by being introduced to him by Doctor Piper while on my first visit to him.

Q. Then it was Doctor Piper who introduced him to you? A. Yes, sir.

Q. How intimately, if at all, had you known Doctor Thomas between the time of that first introduction to him and the time of his coming to Saratoga? A. I had no acquaintance with him. He had, I believe, corresponded with either Doctor or Mrs. Piper, and,

knowing that they were with me, naturally there was a greater degree of knowledge of each other than there would have been with strangers.

Q. So far as you knew or learned anything as to the character, reputation, integrity, and standing of Doctor Thomas up to the time when he came to Saratoga, from what source did you acquire that information? A. Through Doctor Piper. He seemed to have perfect confidence in Doctor Thomas, and their acquaintance seemed to be very pleasant.

Q. State whether or not at the time you persuaded Doctor Piper that Doctor Thomas had come all the way from Chicago to Saratoga, and he should see him, you had any knowledge of the bad faith or the dealings of Doctor Thomas, as he subsequently turned out. A. Never. I had, through Doctor Piper, considered Dr. Thomas as very worthy of Doctor Piper's esteem and confidence. It was the subsequent acts that developed the true character of Doctor Thomas.

Q. Mr. Hay, a series of receipts were handed to you on cross-examination for identification, evidently made at intervals
508 of three months, in which you acknowledged the receipt of $50.00 and some of the receipts given for other items to Doctor Piper; but I call your attention now especially to the item of $50.00, and will ask you in relation to this series of receipts if you will please explain exactly the purpose for which these receipts were given, and explain about this $50.00. A. When the house was being built (as has been stated by me in direct and likewise in cross examination) I at my expense contributed toward the steam-heating apparatus, the mantels, and the gas fixtures. Doctor Piper seemed to feel that he wished to directly contribute towards the house in its completeness in all ways, and I agreed to allow the matter to be settled by the payment of $50.00 quarterly, which was to be signified by merely a passing of receipts so no money would pass in the transaction at all. I do not know whether the entire matter has been fully settled, but it ran on for a considerable time, until the Doctor went away, and sometimes in lieu of these quarterly payments explained above we made a receipt on the 1st of August or the first of the year for a larger amount. That is the idea of the passing of these receipts.

Q. Now, what was the theory or basis of arrangement and plan upon which these quarterly amounts of $50.00 or credits were decided?

Mr. LEIGHTON: Objected to as not proper redirect examination; not responsive to anything brought out in cross-examination.

WITNESS: The Doctor suggested that as he had invested considerable money in the building that it would seem proper to make
509 him some allowance on account of the large investment for the home. Not wishing to make any formal agreement concerning that, the Doctor was satisfied that we should liquidate the amount of the indebtedness between us in the way that has been suggested, which pleased him very much and was no hardship to me, and therefore it was done. I didn't care to take money from

Doctor Piper, and we agreed to liquidate the amount expended by me in this manner.

Q. Then, when Doctor Piper had removed from the house and was living at Chicago and this agreement, which has been referred to as a lease, was entered into, state whether or not that other amount had been entirely liquidated and you did, as a matter of fact, pay the $50.00 to Doctor Piper in money. A. While he was away in Chicago, absent from us and not being at our table, and the amount not being liquidated, I then entered upon the quarterly payment for the purpose of helping Doctor Piper, as Doctor Thomas had informed me that his income was not sufficient for him to live upon.

Q. You say at that time the other amount had not been liquidated? A. Not even in that way; no.

Recross.

By Mr. LEIGHTON:

Q. Was the $100 check the only one placed in your hands by Dr. Piper during any of these visits to Saratoga? A. No; I think not. It occurs to me that I paid the undertaker at Saratoga before leaving.

Q. With funds given to you by Doctor Piper? A. Yes, sir.

510 Q. Didn't he give you any other funds except the two items you have spoken of, the $100 check and the funds for the undertaker's bill? A. He must have given me at the time the funds also for the removal of the remains from Saratoga to Washington.

Q. And to pay your expenses? A. I am not certain about that. It might have been, though, that the return ticket from Saratoga was paid for out of these funds handed me by Doctor Piper. I am not certain about this, but I am quite sure that the money given to me by Doctor Piper was expended for the purpose of defraying the expenses incidental to the removal of the remains, except the undertaker's bill here, which stood for a long time prior to being paid.

Q. The title to this Corcoran Street property under this sacred agreement, as you call it, was to remain in Doctor Piper absolutely and subject to his control, and not at any time to become yours, except you, on your part, performed the terms of the agreement? A. No; the title didn't pass from Doctor Piper, but the agreement that we entered into at that time was not such an agreement that could be broken by Doctor Piper or myself; it was what we considered a lifetime undertaking and would never be broken.

Q. Suppose you didn't keep, didn't live up to, your part of it, what then?

Mr. HOEHLING: That question is objected to as more of a question of law than one to be answered by witness.

A. It never occurred to me that my part of it would not be kept, and in fact it never occurred to me that Doctor Piper would not

keep his part of it, as he stated, and Mrs. Piper stated, also,
511 "that the Doctor's word is his bond."

Q. You have filed here several receipts, one from Dr. Reynolds. Did you pay Doctor Reynolds the amount mentioned in that receipt yourself? A. I must have done so.

Q. Do you have any personal recollection of it independent of this receipt? A. I think I did. I went to his office and paid him, I think.

Q. Are you willing to swear that you did? A. To the best of my recollection I did.

Q. And paid it out of the proceeds of that check? A. Yes; I am only stating what seems to me to be the fact.

Q. You have no personal recollection of it? A. Nothing more than I went out for the purpose of paying the bills incurred in Saratoga by the Doctor and his wife; called at the Doctor's office for the purpose of settling the bill and found him out, and afterwards I went again and, if I mistake not, paid him there.

Q. And this bill of Mrs. Coffinger ($19.00), was that paid by you personally? A. I judge it was; I went for the purpose of paying these bills. I took the receipts and I have since found the receipts among my papers.

Q. After paying these bills, you didn't turn the receipts over to Doctor Piper? A. No; I did not. Doctor Piper was not well enough, physically or otherwise, to take receipts or consider anything pertaining to the matter of the receipts at that time.

EDWIN B. HAY.

512 Subscribed and sworn to before me this 2nd day of July, A. D. 1897.

MARGARET MURRAY,
Examiner in Chancery.

It is here stipulated and agreed by and between counsel for the complainant and counsel for the defendants that a duly certified copy of the deed, referred to in the proceedings here, from Richard U. Piper and Anna V. Whitney may be inserted as evidence and made part of the complainant's testimony-in-chief, unless the same is already on file in the case, and then it will be used as complainant's evidence.

The counsel for the complainant here announces his testimony-in-chief closed.

513 TUESDAY, *May* 18, '97—4.10 o'clock p. m.

Met pursuant to notice to continue the taking of testimony on behalf of complainant.

Present: A. A. Hoehling, Esq., counsel for the complainant; B. F. Leighton, Esq., counsel for the defendants.

Whereupon Mrs. ANNA D. KEARFOTT, a witness produced by and on behalf of complainant, being first duly sworn, deposes and says:

By Mr. HOEHLING:

Q. Please state your full name. A. Anna D. Kearfott.

Q. Your place of residence? A. #1512 Corcoran street, Washington, D. C.

Q. In what capacity, Mrs. Kearfott, are you employed at the present time? A. I am a clerk in the Pension Office.

Q. Are you a widow, Mrs. Kearfott? A. I am.

Q. How long have you been in the employment of the U. S. Government? A. About seventeen years.

Q. How long have you been acquainted with Mr. and Mrs. Hay? A. About fourteen years; between fourteen and fifteen.

Q. During what part of that time, if at all, have you resided in the same house? A. I have resided in their house thirteen years.

Q. When you first took up your residence with them,
514 where were they living? A. #1535 P street.

Q. Are you acquainted with the defendant Richard U. Piper? A. I am.

Q. And with his wife during her lifetime? A. Yes, sir.

Q. Were you living with Mr. Hay in the P Street house upon the occasion of the visit of Doctor and Mrs. Piper? A. Not at that time, but a few months afterwards.

Q. Were you residing with Mr. and Mrs. Hay at the time Doctor and Mrs. Piper took up their residence in the P Street house? A. I was at that time.

Q. Prior to the coming to that house of Doctor Piper and his wife to live, did you at any time see or read any letters from Doctor Piper to Mr. Hay? A. Yes; I read a great many, quite a number of them.

Q. Can you recall the substance matter of those letters that you saw and read? A. The Doctor and Mrs. Piper were very anxious to come to Washington to live and to make their home with Mr. and Mrs. Hay, assuming the relationship of father and mother and children towards one another. Doctor Piper seemed to be very much attached to them, especially after his visit to their home, and he was very anxious to live with them during the balance of his life. That was the substance of the letters, just expressing the desire always to come and make his home with them, he and his wife to take the place of father and mother towards Mr. Hay and his wife.

515 Mr. LEIGHTON: This question and answer is objected to as hearsay; the letters themselves are the best evidences of their contents.

Q. I understood you to say, Mrs. Kearfott, that these letters were shown to you when received and you read the same. A. I read them personally; had them in my hands.

Q. You have not those letters in your possession, have you? A. Oh, no.

Q. During the months when these letters were being received and prior to the coming to this city of the Doctor and his wife, was or was not the subject of the Pipers taking up their residence with the Hays the subject of any conversation or talk between Mr. and Mrs. Hay? A. I heard them repeatedly discuss it; they talked of it very often and of the difference it would make in their family life, and that Mrs. Hay had young children, and their house was small, and all that, and that she was a little afraid that their mode of life being so different, they being young people and fond of entertaining and of society, that it might not be agreeable for the Doctor and his wife, as they were quite old, and she did not want to undertake anything unless she could fully carry it out, and that if they came she would certainly wish to make them perfectly contented and happy. They talked over it in this manner for a long time, upon the pros and cons and so on, until at last there were so many letters came, in which so much was said about it, the Doctor and Mrs. Piper expressing so much anxiety about the matter and stating that they could not be happy unless they allowed them to come,
516 that Mr. and Mrs. Hay agreed to do so, and so wrote to them, and shortly after that they came.

Q. You, as I understand, were living at the P Street house when Doctor Piper and his wife arrived? A. I was.

Q. And I presume they were duly installed in the house after their arrival? A. Yes; they took their rooms in the house.

Q. What, if anything, was said by Doctor Piper in your presence after he had taken up his residence in the P Street house in relation to the building of a new house? A. He said he wished to build a new house, and he was very anxious to purchase the lot. He looked at several himself, and then he told Mr. Hay that he would like him to choose between the two, which he had selected from a number, one of which he desired to purchase. He said, "Will this Corcoran Street lot suit you, Son Edwin (as he called him)?" Mr. Hay said it would, and then Doctor Piper said, "Florence, will it suit you?" She said that it would, and Doctor Piper then asked Mr. Hay if he would go down with him that day and pay the purchase-money, to which he consented, and they went off together. After that he was always talking with Mr. and Mrs. Hay about the house. The Doctor said that he wished for himself and wife two rooms on the second floor and a bath-room, and a hall room on the third floor, and one-half of the attic for his boxes, and that the rest of the house was for Mr. and Mrs. Hay; that "Son Edwin and Florence" (as he called them) could decide upon the architecture and the plans of the house and have it just as they thought best, according to their tastes and desires, and that it would please
517 him whatever they decided upon; that it did not make any difference to him, just so they were pleased, and it was arranged according to their idea of comfort. He wanted these rooms, and the balance of the house was for them; so the plans were made and were submitted and agreed upon, and the house was started and built.

Q. Did you or not ever hear Doctor Piper state any reason why

he desired to build this Corcoran Street house; or, in other words, any reason why the P Street house was not large enough to accommodate the two families? A. He said he wished to build a larger house, the Corcoran Street house, because he desired it for the joint family as it then existed for the accommodation of himself and his wife and Mr. and Mrs. Hay and their children, and that it was to be Mr. Hay's at his death, and therefore he wanted it comfortable and commodious.

Q. Please state whether or not you were present on any occasion when Doctor Piper made any statement as to what disposition he proposed to make of that property; and, if so, please state when that statement was made, where, the persons who were present, and all that was said.

Mr. LEIGHTON: Question objected to, as it relates to a contract concerning an interest in real property, and in order to be valid must be in writing.

A. It was made in his room at #1535 P street. I cannot state the time or date, but it was about the time that the house was being built, and Mr. and Mrs. Hay, Doctor and Mrs. Piper, and myself were present. Doctor Piper said that in consideration of Edwin, his son, and Florence taking care of them the rest of their lives, and they being one common family in the house which he
518 was about to build, that he intended and was going to make a will to the effect that this house, as well as the Chicago property and other property of which he might be possessed at the time of his death, — to Mr. Hay or Edwin: or, in case of the death of Mr. Hay before their death, the same was to apply with regard to Mrs. Hay, and the property would all go to her; or, in case of the death of both Mr. and Mrs. Hay before their own death, that he would take it upon himself to care for the children and to bring them up, and, if possible, to place Edwin's son—that is, Ned, Jr.—in whom he took great interest—that he would place him in life, and that then the property would go to the children of Mr. and Mrs. Hay.

Mr. LEIGHTON: This answer is objected — for the reasons stated above in reference to the question. Further, that it is immaterial and irrelevant.

Q. You say that he stated that, in consideration of the matters you have mentioned, upon his death he was going to leave the property to whom? A. To Edwin Hay, his son, and Florence Hay, his daughter.

Q. What, if anything, was stated by Mr. Hay in response to that? A. Mr. Hay said that he would fulfill his part of the contract to the letter in reference to taking care of Doctor Piper and his wife and in doing the best he could to make them happy, and he always has done so. Then I remember Mr. Hay remarked—I don't know whether it was this time or not—that if Doctor Piper should lose every cent he had in the world that he would consider himself bound to make them happy and take care of them as long as they

lived. I know that Mr. Hay made that remark in the pres-
519 ence of Dr. and Mrs. Piper and myself, but I do not know whether it was at this time or not.

Mr. LEIGHTON: Question objected to for the reasons given to the other question and answer above.

Q. Was any formality gone through with on the occasion of this contract being talked of? A. There was no writing, but they shook hands.

Q. Who shook hands? A. Doctor and Mrs. Piper and Mr. and Mrs. Hay.

Q. And the house was built after that? A. Yes, sir.

Q. Upon its completion did you, along with the other families, move into that house? A. I did.

Q. And continued to reside with them? A. Yes, sir; I have been with them ever since.

Q. Please state what the relations were, so far as you observed them, existing between Doctor and Mrs. Piper and Mr. and Mrs. Hay during that period of their residence in the P Street house. A. The most pleasant relations always, both there and in the other house; just as one family—mother and children and father and children.

Q. In what way did Doctor and Mrs. Piper refer to Mr. Hay? A. Always as "Son Edwin." They generally called her Florence. Sometimes they would say "Daughter Florence," but usually Florence, as that was the common name of the house for her; but it was always "Son Edwin" to him.

Q. Was there any affection displayed by Doctor and Mrs. Piper for the children of Mr. Hay? A. Yes; there was great affec-
520 tion existing between Doctor and Mrs. Piper and the children. They always called them "grandpa" and "grandma" at all times.

Q. State with what care and attention, if any, the Hays treated the Pipers in the P Street house. A. They just treated them with all the consideration and kindness possible. With regard to their eating, the Doctor was particular about his eating, and he could not eat certain things. When the Doctor first came Mrs. Hay told him that if there was anything put on the table that he did not care for, or if there was anything that he desired prepared for himself, that if he would just express his wishes concerning it she would see that he was pleased. She always observed his wishes, and gave the servants orders that they were to prepare for Doctor Piper just what he wanted, and apparently everything was fixed to suit them, and they seemed to be perfectly happy and satisfied.

Q. Did you or not at any time hear the Doctor complain that he was neglected or that his needs were not cared for? A. Never at any time.

Q. Please state whether or not the Doctor in the P Street house ever made any statement in your presence in relation to intention of making or to the fact that he had made a will; and, if so, state what was said.

Mr. LEIGHTON: Question objected to as immaterial and irrelevant.

A. No more than he spoke of this will very often in my presence at the table as common talk. He did not say anything to me particularly, except in his room one time he spoke of it, I believe,
521 but I cannot specify the date. He spoke about it in my presence, and stated that he was going to make a will, and then after that he spoke of the fact that Mr. Cook had made the will and he had signed it, and that now everything was all right and just as he intended it; that he wished it to go in that direction, and now he was perfectly satisfied.

Q. What do you mean by "in that direction"? A. To Mr. and Mrs. Hay as his heirs.

Q. Was this statement made before or after he had made the will, so far as you knew, from any statement made by him in your presence? A. Well, it was after the will was made.

Q. Had he or not made any statement concerning it in your presence prior to the making of the will? A. No; none other than his intention to make a will, and that he wished to have a will prepared, so that his mind would feel easy about it. He stated in that connection that he had made a former will, in which he had left everything to Mr. and Mrs. Hay; but as he was now building this house on Corcoran street that he would rather make another will, so as to more particularly mention in it this house, as the money he had in bank had been drawn out for that purpose, and that he wished a will which would include everything he owned.

Q. Now, when you moved in the Corcoran Street house, state whether or not the relations that had existed between Doctor and Mrs. Piper and Mr. and Mrs. Hay theretofore were in any manner changed. A. Not any change, except that they seemed to be more happy. They had more room and more comfort, and now he (Dr. Piper) seemed to have an interest in the house and was as
522 happy as it was possible to be, and expressed himself so a great many times.

Q. Did he or not at any time express himself to you as being neglected by the Hays in any way? A. Never.

Q. What seemed to be the relations existing between Mrs. Piper and the Hays? A. Oh, the most affectionate relations.

Q. Did she or not seem satisfied and contented? A. Perfectly satisfied and just as happy as she could be.

Q. Did you or not ever witness any disrespect shown Doctor or Mrs. Piper by the children of Mr. and Mrs. Hay? A. No; those children could not be disrespectful to anybody. They treated them with the utmost kindness and respect always.

Q. In what way was that Corcoran Street house heated? A. It was heated by steam, and the Doctor had a stove put in his room because he was of a very chilly nature and he wished the room very hot; in fact, no one could stay in *their* but a very few moments, it was so hot.

Q. State whether or not the house itself was comfortable as

regards heat. A. Very comfortable. My room was very warm and the halls were very warm. Sometimes, early in the morning, before the steam would come up well, it would be a little cooler, but it was comfortable all the time. They had an extra man to attend to the furnace. I have never been in a more comfortably heated house than that.

Q. Were you living at the house when Doctor and Mrs. Piper left for Saratoga and from which trip Mrs. Piper never
523 returned alive? A. Yes; I bade them good-bye from the step.

Q. Up to and including the time of their departure on that occasion, had you not observed any change in the relations that had theretofore existed between the Doctor and his wife and Mr. and Mrs. Hay? A. No; none at all,

Q. Upon the occasion of their leaving you say you bade them good-bye? A. Yes; at the step.

Q. What statement, if any, did they make at that time as to the duration of their trip and as to whether they were coming back? A. They said they were going to stay until early fall or until it got too cool up there in Saratoga for them, then they would return. They went in August, and intended to stay until about the first of October or as long as the house where they were going would be comfortable for the Doctor, who had to have a great deal of heat. There was no specified time.

Q. Did or did not the Doctor or his wife, or both of them, say to you at that time that they would never return to that house? A. Oh, never; no, indeed.

Q. Do you know the object of their departure on that occasion? A. They went for the Doctor's health.

Q. Were you still living in the Corcoran Street house when the remains of Mrs Piper were brought back? A. Yes, sir.

Q. Did the Doctor accompany the remains? A. The Doctor was sick and did not come.

524 Q. Do you know who did accompany the remains of Mrs. Piper? A. Mr. Hay.

Q. Do you know whether or not he had gone to Saratoga for the purpose of bringing the remains back? A. Yes; and he went to Saratoga expecting to bring the Doctor back also, and would have even gotten a private compartment in a car for him, but he didn't consider himself able to come.

Q. He didn't come then, so far as you know? A. No; he did not.

Q. You are still living with Mr. Hay, are you? A. Still living there; yes, sir.

Q. While the Doctor and his wife were members of the household, what opportunities did you have for observation of the home life as it was there? A. I had every opportunity. I was just as one of the family and saw them under all circumstances.

Q. Would you take your breakfast with them? A. Yes, sir.

Q. I presume that you were not there at the noon hour? A. I was not.

Q. At dinner hour I suppose you dined with the family? A. Yes; always.

Q. Did you or not spend your evenings there? A. Always; very often in the Doctor's room. They would come into the sitting-room sometimes, when we were gathered in there, or sometimes we would be all together down in the parlor. Doctor Piper spent a great deal of his time in his own room, because he had his microscope and his books and papers in there, and then sometimes
525 he would have little Edwin, Jr., in there to coach him in his studies in the evening. Doctor Piper was very much interested in this little boy Edwin and his studies. At other times Doctor and Mrs. Piper would sit with us in the sitting-room, and then again sometimes I would go up to my room. It was just like any family and Dr. and Mrs. Piper could do just as they pleased. The freedom of the house was theirs.

Q. They had the freedom of the entire house and did just as they pleased? A. Yes; just as they pleased; exactly.

Cross-examination.

Mr. LEIGHTON:

Q. You have been living with Mr. Hay since 1884? A. April, 1884.

Q. Are you related to him or his wife? A. Not at all.

Q. There as a boarder or as a friend? A. I am there as a friend.

Q. As a matter of fact, you paid your board? A. I did, because I insisted upon her taking it.

Q. And have always paid it since you have been there? A. I would not have stayed without doing so; but still it wasn't as a boarder, because she did not want boarders and was not soliciting boarders, so I didn't go there as a boarder, but as a friend.

Q. But you paid your board since you have been there? A. Yes.

Q. After Doctor Piper came to the P Street house he occupied a room on the third floor? A. Yes; two rooms in the third story.

526 Q. And you occupied a room on the second floor? A. I had a room in the third story. There were three rooms there.

Q. And Mr. Hay's family occupied the balance of the house? A. Yes.

Q. How many servants did he have? A. Two servants, nurse and cook.

Q. And the same before Doctor Piper came there? A. Yes.

Q. Were any of those letters to which you have spoken addressed to you? A. Not at all.

Q. How did they happen to be shown to you? A. Because Mr. and Mrs. Hay both treated me as an old friend and consulted me about it.

Q. You speak of him as an old friend. A. Mr. Hay; yes, sir.

Q. Did he speak of Doctor Piper as an old friend? A. No, sir.

Two or three years before this, I think, they met first, in a law case at Yankton, Dakota.

Q. You don't know what became of those letters? A. Mr. Hay has them.

Q. He preserved them? A. He has them all.

Q. The only reason that Mrs. Hay objected to the coming of the Pipers was for the fact that she feared that she could not make them happy? A. It was because she was afraid that they might not as two families agree together, and that they might not like their small quarters.

527 Q. It was not out of consideration for the Pipers entirely? A. Entirely so; yes. Mrs. Hay was afraid that they would not be satisfied with their small home, and, she and Mr. Hay being fond of entertaining and of going out in the evenings, that their mode of life might not be agreeable to Doctor and Mrs. Piper.

Q. The Pipers were willing to accept it as it was? A. Yes; they were willing, and it was agreed to upon these terms I have spoken of.

Q. And her only objection to the Pipers coming was because she was afraid they would not fall into their mode of life? A. Yes. She said she would consider herself obligated to care for them just exactly as she would for her own mother and father, and that the only thing she feared she could not make them as happy as she would like.

Q. At the time that that contract was made that you speak of, what property did Doctor Piper speak of? A. He spoke of the house he intended to build and of the house that he owned in Chicago and some lots.

Q. What value was put upon them, if any? A. I cannot be certain about that.

Q. Was any other property spoken of, any personal property? A. No; no other property.

Q. Was any list of the property presented to Mr. Hay? A. Not in my presence. He just spoke of his property in this way, "All the property that I now own in Chicago and elsewhere."

528 Q. How soon was it that this contract was made after the Pipers arrived—this statement, not contract? A. Pretty soon after; not very long; a few weeks after. It was after the lot had been bought for the new house and the architect was building the house.

Q. Was Mr. Hay on his part to furnish the Doctor with his clothing? A. Oh, no.

Q. Was he to provide for his medicine in case he was sick? A. No.

Q. Pay his doctor's bills? A. No.

Q. Was Doctor Piper to pay for his board during the time? A. No; not a cent.

Q. What was Mr. Hay to do for Mr. Piper? A. He was to make it comfortable in the home; he was to do everything for his comfort in the way of a home and making him happy, and doing for him as for a father. If Doctor Piper was sick, of course he was —

see to nursing him and taking care of him, and, if necessary, to furnish medicine.

Q. Was anything said about it? A. No; nothing particular. He was to do everything for him for his comfort. Mr. and Mrs. Hay were to do for Doctor and Mrs. Piper as a son and daughter would for a mother and father. That would cover everything, it seems to me.

Q. Then the terms of this contract, as you call it, so far as Mr. Hay was concerned, were of the general character of which you have stated—he was to provide a home for him, and as you
529 have stated? A. Yes; and make him perfectly comfortable in every respect, which he did; to be affectionate toward them, and to love them as son and daughter and father and mother, and so he did. He was devoted to them. Mr. and Mrs. Hay were both devoted to them.

Q. They moved into this Corcoran Street house in 1888? A. Yes; 1888.

Q. Was Doctor Piper in the habit of furnishing fruit for himself, buying fruit for his own use on the table and in his room? A. He would sometimes buy some fruit; for instance, in February, when berries would first come, he would buy them and bring them to the table; just when such things were not on the market, but were in the fruit stores, as any old gentleman might do.

Q. It was an unusual thing for him to purchase fruit? A. Oh, no; he did not do it often; he didn't have occasion to buy anything for himself in the way of food or fruit; the meals there were excellent; Mr. and Mrs. Hay kept an excellent table always.

Q. Was Doctor Piper a hearty eater or was he simply particular as to the character of his food? A. Sometimes he was quite hearty, but he was always particular. He could not eat pork and veal and such things as that; he preferred steak or chicken or turkey; something like that. Anything that he could not eat was not put before him; there would always be something extra prepared for him. Mrs. Hay told him that if there was anything on the table that he did not like at any time he could have what he desired prepared extra, and she so ordered the cook, and always, when he ex-
530 pressed his wishes in that particular, she would see that they were carried out.

Q. Have you testified that in the Corcoran Street house there was a man employed to attend the steam-heating boiler? A. Yes, he was.

Q. Now, was he employed all the time during the years that Dr. Piper was there? A. Not all the time, but part of the time—the first two years, I think. There was a man that attended to the heating apparatus and was also dining-room servant, but he seemed to have so much to do that they relieved him of that, and another arrangement was made by which a man came in from the outside. This outside man went around to about half a dozen houses in the neighborhood. He would come at six o'clock and shake it down and put the coal on, and come again at night and once or twice

during the day, but at other times the cook would attend to it. She seemed to learn in the meantime and did it all right.

Q. This man that you had there was employed during the winter or all during the year? A. This man who was the dining-room servant was employed all the year, but the one that came in was only during the winter months.

Q. Do you remember when he was employed? A. I cannot tell.

Q. Or when he was discharged? A. I do not know.

Q. In the summer time, what did the man do outside of waiting on the table? A. He would be there until the time they would be going away in the summer, and then he would get a place at a
531 watering place, and there was a girl substituted in his place.

Q. You don't know how many weeks of the first year that you were there that this man was there—this outside man? A. No, I do not know.

Q. Do you know whether he was there at all during the second year? A. I think he was; if he was not, then the man who was the dining-room servant did it. There was a man there all the time except possibly the last two or three years, when there had been a maid in the dining-room, and the cook attended to the furnace, and she did it just as well, and, in fact, Doctor Piper thought it was better.

Q. Then the servants that you employed in the Corcoran Street house were the same as in the P Street house? A. No, there was an extra one always.

Q. For what purpose? A. Because there was more at the table and it was necessary. They had an additional one at the P Street house after Doctor Piper came.

Q. What servant was that? A. It was a girl to attend to the dining-room, and in the Corcoran Street house it was a man in the dining-room and this outside man.

Q. When you had a man in the dining-room you didn't need the girl, and when you had the girl you didn't have the man? A. No.

Q. Do you know that Doctor Piper made a will before he left for Saratoga making a disposition of his property? A. No, I didn't know it at the time, that he had made a will, but afterwards
532 I knew of it because after Doctor Thomas came on and opened the rooms and carried the things off and left the apartments in such a disturbed state, among the debris this will was found when we went to arrange the rooms again.

Q. Didn't you know that he had made another will, other than those you speak of, disposing of this property in a different way from what he disposed of it in these wills? A. I did not.

Q. You don't know it now? A. I do not.

Q. Were you present at any time when there was any disagreement between Mrs. Hay and Doctor Piper in regard to the management of their son—the young son of Mr. Hay? A. Oh, no.

Q. Do you recall that Doctor Piper desired to send the young man away to school? A. He did wish to send him to college, and

Mrs. Hay thought it would be better not to do so just at that time, as he was but a child.

Q. Mrs. Hay objected to it? A. I don't know whether she did or not; there was no particular objection to it. There was in fact no decided arrangement on the part of Doctor Piper to send the boy to school. It was just spoken of by him, and they talked it over just as they did many things which were for the welfare of the children. Doctor Piper just spoke of it as he did of other things for the advantage of the boy, as he was much interested in him; but there was nothing decided upon; it was only discussed. He was but eleven years old and too young to consider it.

533 Q. And there was no disagreement between Doctor Piper and Mrs. Hay or Mr. Hay on that occasion and in reference to that? A. I never heard of any and never witnessed any, which I should have done if there had been any.

Q. Did Doctor ever complain of his food there? A. No; I don't think he ever did. I never heard him do so. He would often speak of the food as being very nice.

Q. Do you recall ever making this remark: that Doctor Piper, considering the price he was paying, ought to get better food than he was getting? A. I said that?

Q. Yes. A. Oh, no; I never said anything like that, for he never paid anything at any time. He never complained of his food, but spoke of everything being very nice. Sometimes the meat would not be cooked quite enough and he would send it back again. There was never any discussion whatever about the food. If something was not cooked just to suit him and Mrs. Hay knew of it she would have it cooked a little more, and she would tell the girl always to do what the Doctor wanted, whether she was present or not, and she always wished to have him pleased in everything. There was never any complaint made by Doctor Piper.

Redirect.

Mr. HOEHLING:

Q. Mrs. Kearfott, how many servants were employed in the P Street house before the Pipers arrived? A. Two servants.

Q. How many servants were employed after their arrival? A. Three.

Q. And how many servants were employed in the Corcoran
534 Street house? A. Three.

Q. During the winter time? A. Yes; during the winter time.

Q. What positions were filled by these three servants? A. There was the nurse, who had formerly taken care of the table, and the cook. Then, in the Corcoran Street house and after the arrival of Doctor Piper and his wife in the P Street —, there was a cook and the nurse and the extra servant to attend to the table. Doctor Piper was very particular about the time of having his meals and sometimes would be quite disagreeable about it. Mrs. Hay always would have it on time, and gave the servants orders that it must

always be on time for the Doctor, and if the meal was not ready for the entire family, to put the Doctor's on the table, and then prepare the remainder for the family, or at least to allow Doctor Piper to start his meal, in order not to be late.

Q. State whether or not Doctor Piper ever said anything to you in regard to having relations living, and, if so, who these relations were? A. He has said in my presence—I don't think it was to me particularly—that he had no relations that he cared anything for; therefore this will was made, as he had no relations that were anything to him.

Q. Did he at any time make any statement in your presence as to what relatives he had living? A. He spoke of a brother Howard, I think, and a sister, but he didn't know this sister had this daughter.

Q. Which daughter? A. The one who was present here,
535 Miss Whitney. He said when she called, after he came back to the dining-room, that she might be very nice and pleasant, but that he did not remember her as being his sister's daughter.

Q. Did the Doctor at that time make any statement to you as to having met Miss Whitney before? A. He said at the table that he did not remember her at all, and she must have been in the arms if he had ever seen her, and even then he didn't remember her.

Q. As I understand it, Miss Whitney called upon Doctor Piper after they were living in Corcoran street, and took a meal? A. Yes; and I was present; it was a holiday.

Q. Did the relations between them, Doctor and Mrs. Piper and Miss Whitney, seem to be formal or intimate? A. Not intimate at all; just formal, but very pleasant.

Q. They didn't seem to know each other very well? A. No; he was asking questions about the circle of friends. I cannot tell you just what was said, but he asked such questions as one would ask.

Q. How long prior to the time when Doctor Piper left the city for Saratoga that Miss Whitney called? Can you state? A. I don't think I can tell. It was, I think, about a year. I could not be certain about that.

Recross.

Mr. LEIGHTON:

Q. How long did Miss Whitney remain at this visit? A. She remained the day, I think. She was with the Doctor at the table, and, I think, afterwards the Doctor invited Mrs. Hay in the room
to talk with them.
536–541 Q. Did she remain over night? A. Not on that occasion.

Q. And where did she see her relations—in their room or in the common sitting-room? A. First, in the parlor; he went right into the reception-room, on the first floor, when she arrived and had an interview with her, and then she left, and then she came back the next day and took dinner.

Q. Were you there at the meal? A. Yes; I was there.

Q. These were the only two times that you saw her? A. I don't think I saw her any more. I was with her at dinner; that I am positive of.

Q. That was the only time you ever saw her? A. No; I have seen her since, when she came to see Mrs. Hay about the Doctor's furniture.

Q. Did Doctor Piper ever speak to you about Miss Whitney's mother, or to any one in your presence? A. No; he never spoke of her at all.

ANNA D. KEARFOTT.

Subscribed and sworn to before me this 17th day of August, A. D. 1897.

MARGARET MURRAY, *Examiner.*

* * * * * * *

542–555 "EXHIBIT E. B. H. #4."

CHICAGO, *Jan. 11th*, 1886.

DEAR SON NED: I send you today a paper of mine published in "Mind in Nature" which I hope you will find time to read especially as it has brought down on me a whole army of prophets and priests of the "new dispensation." Our neighbor Bishop Fallows (editor) tells me it (my paper) is doing such a good.

Would it be in accordance with etiquette, and would you be willing to call on my friend, Gen'l Oates member of the House from Alabama, I traveled with him for two weeks last summer, and found him a very agreeable gentleman. Could you not take with you (when calling upon him) the pamphlets I send and call attention to my paper at the same time giving my compliments. I can send you another copy—and shall wish to do so. I think General Oates will have his wife and child with him.

Perhaps you and Florence would like to form his acquaintance, it might be mutually profitable. If the lady is half as intelligent and agreeable as her husband you will I think be glad of her acquaintance as I am sure she will be of you and yours.

Thanking you for your last kind letter, I am—

Affectionately yours R. U. PIPER.

E. B. Hay, Esq.

* * * * * * *

556–578 *Draft.*

The Bank of California.

$5,300. SAN FRANCISCO, *Nov.* 8, 1886.

At sight of this duplicate of exchange (original unpaid) pay to the order of Richard U. Piper fifty-three hundred dollars, value received.

R. MURRAY, JR.

To Union national bank, Chicago.
No. 9161.

Countersigned:
J. S. ALLEN,
Exchange Clerk.

579 & 580 "EXHIBIT E. B. H. #25."

SARATOGA, *December* 30*th*, 1892.

DEAR EDWIN: Our Dr. says we had better stop some time longer in the peaceful atmosphere of our hotel, the quietes- house it was ever my fate to stop at. In regard to the Sharon money I have no doubt Newland will pay it at once if he is in Washington. The paper is in the Safety deposit bank Pennsylvania avenue, 916 as I think if this is wrong, please give me the true name, number etc., as I wish to use them you could of course have passports made out for Mrs. P. and myself as her name occurs in the paper. If you get it could you not come here yourself and bring it, I should be glad to pay all bills and trouble for your coming.

I have given one receipt for one thousand dollars in this connection, the last words Newland said to me about the matter was that I was as sure of the money as that the sun would rise and set. So I do not suppose there is any idea of resisting the claim.

If we do not get well and strong we shall of course expect you to come and help us in your house. With much love.

FATHER PIPER.

SON EDWIN: Please notify us whenever you expect to be absent for any length of time. So you would get our telegram.

On envelope:

E. B. HAY, Esq.,
1512 *Corcoran Street N. W.*,
Washington, D. C.

Personal letter.

* * * * * * *

581 "EXHIBIT E. B. H. #28."

SARATOGA, *December* 14, 1892—Wednesday.

DEAR NED: I have about given up all hope as to my dear wife though nurse thinks she is no worse this morning.

In regard to the Sharon case the agreement between Mr. Sharon — myself was that he was to pay me (10,000) ten thousand, in case we won in the U. S. court and in all the other courts at last which has just been done in additional to what he had paid at first for my services. After Mr. Sharon's death both Mr. Newlands and Mr. Fred Sharon gave me a written agreement to this effect signed by both of them and this is the paper in the Safety bank on the Avenue, Washington.

The account stands thus

582–587 The Sharon estate to Dr. R. U. Piper Dr. for services as expert, to be paid, by agreement, after the case is finished in the courts.

Ten thousand ($10,000) dollars	$10,000
Paid one ($1,000)	1,000
Now due nine ($9,000)	9,000

Rec'd payment.

——— ———.

This form of receipt is the one given in the case of the one ($1,000) and of course is all sufficient for the larger sum. Let him send drafts however and I will send any form of receipt he shall desire.

And now Ned collect this at once as I know you can, you have such moral power in such cases, I did propose to make a separate disposition of this paper but will not do so under the conditions.

With much love, R. U. PIPER.

E. B. Hay, Esq.

* * * * * * *

588 "EXHIBIT E. B. H. #34."

Broadway house, 522 Broadway. Open throughout the year. G. S. Hine, proprietor.

SARATOGA SPRINGS, N. Y., —— 12*th*, 1893.

Mr. Hay.

DEAR SIR: The Dr. don't sit up any. And he says better have all things square. Dr. Thomas will probably be on to see about his matters directly.

R. U. PIPER,
By *Per* W. T.

P. S.—Dr. Inley says, the Dr. is not able to travel. And I doubt if he ever will be. I have been with him constantly night & day. He is under effects of morphine or business trouble. And talks at random. I don't think Mr. Thomas will be here.

Yours, WM.

589–600 On envelope:

E. B. HAY, Esq.,
1512 *Corcoran St. N. W.*,
Washington, D. C.

Wm.'s letter.

* * * * * * *

601 "EXHIBIT E. B. H. #50."

CHICAGO, *Dec. 5th*, 1893.

Hon. E. B. Hay, 1512 Corcoran St, Washington, D. C.

DEAR EDWIN: Your various letters have all been duly received. But as I have been visiting in the country for a few weeks it was not convenient to answer them. Am very much pleased to learn that you are all well and able to eat turkey. I think that "Richard will soon be himself again" at least I hope so.

You will please find enclosed the lease duly executed, you know I have great confidence in Judge Adams therefore I submit all papers to my att'y who did not think the receipt you sent quite explicit enough you will please find enclosed a rec'pt for you to sign and return, though I don't see any special difference in them.

Hoping this may find you well I am with respects

Affectionately,

R. U. PIPER.

Dictated.

P. S.—Have the kindness to send me duplicate tax rec'pts from the time I bought the property to date I can't find a single rec'pt perhaps you have them. Judge says he ought to have them.

R. U. P.
T.

Dictated.

On envelope:

G. S. Thomas,
607 Chamber of Commerce,
Chicago.

E. B. HAY, Esq.,
1512 *Corcoran St.*,
Washington, D. C.

602 & 603 Whereas, certain dealings and agreements have heretofore been had and made between Edwin B. Hay and Richard U. Piper, among which were certain agreements and transactions in relation to the house, No. 1512 Corcoran street in the city of Washington, D. C. and,

Whereas, the said parties have this day made a full settlement of all amounts, accounts and agreements heretofore had, made and entered into between them,

Now, therefore, I, Edwin B. Hay, do hereby acknowledge that I have received full payment and satisfaction of all the claims and demands in any way arising or growing out of any agreements or transactions heretofore had between the said Piper and myself; and further that I have no claim or interest of any kind or nature in the premises above described, No. 1512 Corcoran street in the city of Washington, D. C., except the leasehold interest which I have

therein under the lease from the said Piper, bearing even date herewith.

In testimony whereof I have hereunto set my hand and seal this 20th day of October, 1893.

* * * * * * *

——— ———. [SEAL.]

604–611 "EXHIBIT E. B. H. # 52."

CHICAGO, *July* 29, 1894.

DEAR NED: Have you not received my letter containing rent receipt etc., I think you should be prompt on your part of our business relations as you have the house at a low rate of rent and as I have before told you I have left you in will many times the whole rent etc., please send me the receipts asked for as soon as possible.

Very truly, R. U. PIPER.

E. B. Hay, Esq.

On envelope:

E. B. HAY, Esq.,
1512 *Corcoran St. N. W.,*
Washington, D. C.

* * * * * * *

612 For Exhibit E. B. H. No. 65 see deposition of G. S. Hine, page 167.

613 "EXHIBIT E. B. H. # 66."

WASHINGTON, D. C., *Aug.* 25, 1892.

In case of the death of my wife Elizabeth F. Piper at or before my own death I make this my last will and testament:

1st All debts and funeral expenses are to be paid.

2nd, I give and bequeath to my sister Victoria A. Whitney now of Newport Maine, the sum of two thousand dollars ($2,000) to be paid as soon as possible after my decease by my executor,

3rd I give to my brother in-law (John C. Heywood) five hundred dollars ($500) to be paid as above, and I also give to the said Heywood one of my large pictures with frame, the said Heywood now lives at (Alta, Buena Vista Co. Iowa.)

4th, I give and bequeath to Edwin B. Hay (of Washington D. C.) on account of the love I bear him, and his many kind services he has done for me. All the rest of my estate real and personal and mixed, to be his absolutely for his sole use and disposal and herein appoint him executor of this my last will.

RICHARD U. PIPER.

614 "EXHIBIT E. B. H. # 66."

In case of the decease of my husband and myself at or near together, I give to my sister Sarah I. Heywood and to her daughters Elizabeth and Lucy Heywood, all my clothes of every description with the exception of my best black silk which I wish given to my friend Mrs. Della L. Howe of Chicago, Illinois. I wish three of my nicest books to be given to Mr. and Mrs. Darling. My husband has given me during his lifetime pictures painted by his own hand, one small one I wish given to Mr. & Mrs. Darling, one large one of Mt. Hood to be given to Mr. & Mrs. Heywood of Alta, Buena Vista county, Iowa, one picture small one to Mr. & Mrs. William Hay one large picture to Mrs. Howe, one large picture to, Dr.'s sister Mrs. Victoria A. Whitney of Newport Maine. The organ to Luch Heywood of Alta, Illinois one small picture to Mrs. Wayne 1510 I street. I wish Dr. & Mrs. Thomas to have one of the California pictures with frame. I wish one of my dresses given to Mrs. Jane Folsom and one to Mrs. M. A. Folsom.

E. F. PIPER.

615 DEFENDANTS' EXHIBITS.

"EXHIBIT A."

Agreement between Edwin B. Hay, Dr. R. U. Piper, and Mrs. E. F. Piper with regard to the house owned by the said R. U. Piper, No. 1512 Corcoran street, Washington, District of Columbia.

Mr. Edwin B. Hay and family are to occupy said house as a residence, using all the rooms for that purpose except the western suite consisting of two rooms and bath-room and closet, at the head of the back stairs on the second floor, and north hall room on the third floor and smaller or eastern attic room on top floor, which four rooms Dr. Piper reserves for the special use of himself, and wife. As an equivalent for such occupancy of said house, Mr. Hay is to furnish good and satisfactory board for the said parties, Dr. and Mrs. Piper, fire and lights, also attendance of servants as may be necessary. The parties to this contract agree to live together as members of one family, having the same privileges in all parts of the house common to the general use of the family, such as receiving-room, dining-room, parlors, etc. In case Dr. and Mrs. Piper should have friends visiting them Mr. and Mrs. Hay agree to treat them with the same kind of attention as they do their own friends. In addition to the above Mr. Hay agrees to pay the taxes on said house including water tax, and also to pay the said Piper two hundred dollars a year in quarterly payments of fifty dollars each, at the beginning of each quarter.

As said house has cost several thousand dollars more than was at first contemplated, Mr. Hay agrees that certain moneys that have

been advanced by him in payment of certain fixtures in the
616 house shall be allowed to remain without any charge of interest for the use of the same on the part of Dr. Piper. Mr. Hay is to have no right to sublet any part of the house. It is contemplated that this agreement shall remain in force during the lifetime of Dr. and Mrs. Piper. Should any difficulty or misunderstanding arise between the parties with regard to it, they, the contracting parties, agree to refer the matter to disinterested persons for adjustment. Bedclothing to be supplied and washing to be done, as heretofore. This agreement is to remain in full force in case of the death of one of the parties, either by Dr. or Mrs. Piper—that is the survivor is to receive the quarterly payments and retain the same rooms as during the lifetime of both. In case of the death of Mr. Hay previous to the death of Dr. or Mrs. Piper or both, this agreement is to remain binding on Mrs. Hay providing she is able to carry out the same.

Washington, D. C., July 30, 1888.

(Signed) —— ——.
—— ——.

617 "EXHIBIT B."

Rec'd of Dr. R. U. Piper one hundred and forty-seven $\frac{13}{100}$ dollars in full for gas fixtures purchased of McKinney & Co., Boston, Mass.

Also $2.75, paid for cannel coal.

Sept. 8th, 1888.

E. B. HAY.

147.13
2.75

149.88
50

$99.88

"EXHIBIT C."

No. 47. WASHINGTON, D. C., *Sept.* 10, 1888.

Central National Bank of Washington City

Pay to the order of E. B. Hay the sum of ninety-nine dollars & eighty-eight cents *dollars*.

$99.88. R. U. PIPER.

Endorsed: E. B. Hay.

"EXHIBIT D."

$50. Rec'd of Dr. R. U. Piper the sum of fifty dollars on ac. of mantels and fireplaces in 1512 Corcoran St. N. W.

E. B. HAY.

Nov. 1st, 1888.

618 "EXHIBIT E."

Received of Dr. R. U. Piper the sum of fifty dollars on account of mantels in house No. 1512 Corcoran St.

E. B. HAY.

Feb'y 1st, 1889.

"EXHIBIT F."

50.00. WASHINGTON, D. C., *May* 1, 1889.

Rec'd of Dr. R. U. Piper the sum of fifty dollars on ac. of mantels at No. 1512 Corcoran St.

E. B. HAY.

"EXHIBIT G."

Edwin B. Hay, attorney-at-law, 1425 New York avenue.

WASHINGTON, D. C., *August 1st*, 1889.

Rec'd of Dr. R. U. Piper the sum of fifty dollars, to be applied on ac. of mantels in house No. 1512 Corcoran St., Washington, D. C.

—— ——.

Fifth [quarterly payment].* No. 4.

619 "EXHIBIT H."

WASHINGTON, D. C., *Nov. 1st*, 1889.

Rec'd of Dr. R. U. Piper fifty dollars, quarterly payment on mantels in 1512 Corcoran St.

E. B. HAY.

"EXHIBIT I."

WASHINGTON, D. C., *Feb'y* 1, 1890.

Rec'd of Dr. R. U. Piper the sum of fifty dollars ($50.00), quarterly payment due on the account of bill for mantels, etc.

E. B. HAY.

"EXHIBIT J."

No. —. WASHINGTON, D. C., *Jan'y* 4, 1892.

The Central national bank

Pay to the order of E. B. Hay one hundred dollars.

$100.00. R. U. PIPER.

[Printed across the face:] First national bank, Saratoga Springs, N. Y. Cash. Jan. 7, 1893.

Endorsed: E. B. Hay.

[* Words enclosed in brackets erased in copy.]

620 EXHIBIT "K."

WASHINGTON, *Jan'y 7th*, 1892.

Edwin B. Hay, attorney-at-law, 1425 New York Ave.

MY DEAR DR.: I intended to start tonight for Saratoga, to bring you home,—but for your note today saying that you would not come until the Dr. says you are able. So I must wait the call. Had he but studied your interest he could have advised it on Wednesday night, that you should start with me on Thursday it would be so much better that you could be at home. You are under a great expense there, and here you will be under none.—Here love will have something to do with ministering to your wants—there everything is a matter of business—Here are your friends, there strangers, Mr. Geo. Hine, whom both yourself and dear Mother Piper's last letter praise so highly is your friend, and has your full interest at heart.—He would do nothing but in kindness to you. When this great strain is over and you get away from worry and the scene of so much sadness you will realize that you have nearly become the victim of bold design on the part of those you call your friends there. You are mistaken when you say that I have set a watch over you to keep your friends away. You do wrong me. How can you forget my loyalty to you. How can you forget that dear dear Mother Piper, struggling to utter her thoughts so difficult was her speech when in her last words to me on earth said, "*Edwin be kind to Doctor and take care of him.*" That sacred message as from one in
621 heaven—from her we loved so—placed even a greater bond upon me, *to love and care for you.* You won't let me think for you now in this your hour of weakness. You won't let me put my arm about you and help you home, where there is good cheer, and comfort and affection, but on the contrary prefer to remain where conspiracy did its work in so many many ways. Oh! Dr. please let the light come to you—see as I have seen and know the truth. In all the world mine is the arm for you to lean upon. Did it ever falter in its duty. Did you ever express a wish that I did not gratify if in my power. Why then should your faith be shaken at all. When I tell you all, you'll realize and understand.

I'll attend to the business here faithfully, and hope soon to bring you to enjoy the result of it.

Your son EDWIN.

"EXHIBIT L."

MY DEAR DR.: You cannot imagine the happiness your own letter gave me this morning. You must know that I have a heart, that I possess affection—that you and Mother Piper God bless her memory, for many years have shared that affection. It was awfully hurtful that without cause and at once you should change a relationship that was not formed in a moment but the creation of years—so to see your own words again is a pleasure. I know how difficult it is now for you to write, so it gives me greater appreciation of your efforts.

622 I wish that you were at home so that I could talk to you, words in writing fail in their meaning I could say so much and you could see for yourself your only and right course in honor and justice. *I could not wrong you, dear Doctor nor have I ever done so. I never did a wrong act in my life, surely I would not do so to you.* I have shown more deference to your every wish than a son could, I have given to you, *more affection than a son could*, and I do ask it in return, I am now ready to devote myself as I agreed to you and your should permit me to do so.

You could not write much I know—just a word from you, is all I want, I'll write to you.

Everything moves along quietly. It is awful hot Florence and this Ned and Julia are spending today and tomorrow in Gathland the home of Mr. George Alfred Townsend (Gath.) I have not been able to run off even for a day. The stringent times has caused several assignments to me, and I am sort of a merchant in sad-lier's furnishings, paper-hanging furniture and yesterday an electric store, so I am a much-occupied person. Don't worry about our business matter, I'll get to you as early as I can.

Congress meets Monday and the new Congressmen are beginning to come to town. Some of them are hard-looking, I tell you, showing that very little care was taken in the looks of the men to send as representatives. I trust the coming of Congress will ease matters some in the country. Two banks suspended here today, just private banks not nat'l banks.

I will write again soon, I am almost melting as I hastily do this.

With so much love, sincerely, NED.

1425 N. Y. Ave., Aug. 5, '93.

623 "EXHIBIT M."

WASHINGTON, D. C., *July* 15, 1895.

MY DEAR DR.: By this time no doubt you have received a letter in answer to yours of the 3rd unless it was misdirected to Newport R. I. By law we could pay taxes this time only for the year entirely because of a change in the records. I paid in full on June 30, 1895, as soon as bills are entered and marked paid I will send receipt to you therefore there is no hitch. Indeed my dear Doctor you know that I never allow any hitch in any of *of* your business affairs nor have I yet done anything not fair. I have been faithful to the letter to you in all the years of the relationship existing between us, and I hope to be so. All I ask is your trust and confidence. You were led away from me,—and permitted a barrier to be erected though I do believe against your will. I am grateful to kind Providence that you have broken that unexplainable spell that bound you to Chicago, I'll arrange any business then of course depend upon me, I will do all things right, whatever arrangement you wish me to engage in concerning the home here will be cheerfully considered :—

As all things are in perfect confidence between you and me you can freely speak freely act.

I am in the early part of August arranging for a little vacation so if agreeable to you I'll get to you and will receive instructions from you in person. All are well. With love,

Affectionately, EDWIN.

624 "EXHIBIT N."

WASHINGTON, D. C., —— —, 189-.

By me as you know well has always been done. I will report to your from time to time as to the progress we make in the matter and as I will begin proceedings at once, I am in hopes that before 30 days pass by, we may have a settlement of the matter or be well advanced on the road to such. Anna says that the coat and watch are claimed by Mrs. Thomas as a gift from you. We can refute that very easily. Thomas told Mrs. Kearfott when he was here that these things had not been touched; that they were in a trunk and that you had the key. Did you ever in your life know such an unmitigated liar as that fellow. Pardon me for being so strong in my expressions of him but he and his family have tried so hard to injure me in your estimation that I feel it would be a sort of delight to be a party to this just punishment that must come to him. Give my kindest regards to Mrs. Whitney. I was so glad to have been afforded the pleasure of spending a few days with you at their hospitable home. All are well at home.

With sincere regards, I am

Affectionately yours, EDWIN.

Dictated.

625 "EXHIBIT O."

WASHINGTON, D. C., *Sept.* 30, 1895.

MY DEAR DR.: Yours at hand—please be sure that I understand your wish and position in the matter—and while we will not move in the premises it is necessary to be fortified by the knowledge of the facts—so your having them reduced to writing is a good thing. You do not want to delay very long—delay is contrary to your rule. Mr. Hogan has returned from Europe and he with Mr. O'Donnell will conduct the case speedily and successfully. Now please don't interpose any objections when we begin as everything will be done for your interest.

I am so sorry your niece is sick I trust it is nothing serious and that she'll be up and about again.

Convey my regards to her and your sister. Now don't worry and please have confidence.

Affectionately y'rs, NED.

626 "EXHIBIT P."

MY DEAR DR.: *You must not delay too long in your matter.* We are ready to proceed when you are, and you must follow my advice.

I know you hate trouble and worry but in this case you are only protecting your rights. We'll do the fighting. Have confidence and your property shall all be restored to you, so please advance the cause by allowing me to proceed. I trust you are well. Before I went West I sent letter with enclosure, if you had any difficulty in collecting ch'k I can send money order next time.

Regards to self and sister. Trust Miss Anna is better.

Affectionately, EDWIN.

Oct. 21, '95.

"EXHIBIT Q."

WASHINGTON, D. C., *Nov.* 1, 1895.

MY DEAR DR.: Your silence is quite embarrassing to me—as I cannot take any step without hearing from you. The attorneys in Chicago are waiting also to hear from me. Now will you please advise me at once of your intention in the matter. I know you hate trouble but you cannot sit quietly by and see yourself so shamefully treated, and robbed as you have been by this party. Do write concerning it.

I am papering the other rooms at home and painting. I have in cleaning had your rooms cleaned they being closed last winter caused great damage to pipes and bath-room, they being
627 frozen and bursting. As such a thing is not safe, I suggest that I may open the rooms and use them. More for protecting them than anything else. In point of health it is unsafe to keep them shut up, though I would not do anything without your consent. Let me hear at once.

Affectionately, NED.

"EXHIBIT R."

WASHINGTON, D. C., *Nov. 5th*, 1895.

MY DEAR DR.: Yours rec'd I am very much surprised at your action. Why did you not say that you did not have confidence in me to settle this matter, and that would have caused no embarrassment to me. We went to these gentlemen in Chicago and one of them performed service for your niece. And the firm all prepared to proceed in this matter when you should advise me to go on. We intended first to propose a settlement without suit, then to proceed otherwise. You delay by stating that you were preparing a written statement. Now you state that you engage a total stranger to you to undertake a matter of which he is to learn the facts. When I am familiar with and a part of the matter. It is just such being away from me, who has been faithful in every particular that has cost you so dearly. It is not right from any standpoint and you ought not to act so—I went to you in August and advised with you—I engaged Messrs. Case and Hogan in Chicago, to assist when the time came. I made them familiar with the case. And our plans were arranged to proceed when you said so. If you
628 would say as much as this to Mr. Davis he would not interfere. I have tried to do all for you and your interest that is

possible. You permitted that man to influence you. And you have been robbed by him. Now when the time comes again and you appeal to me, you permit yourself to go to a stranger who has no interest whatever in you. See if you can reconcile your action to what is right in the premises. I write this kindly and justly.

Affectionately, EDWIN.

"EXHIBIT S."

WASHINGTON, D. C., *Dec.* 14*th*, 1895.

MY DEAR DR.: I wrote to you some time ago, but no answer. I have finished papering and painting put a new floor in part of kitchen. I suggested for health safety and the keeping down of moths the opening and brightening of your rooms, please make a note of my suggestion.—Everything shall be kept in order for you. The house now is in perfect condition, absolutely. Anna called on her way to N. Y. *I incurred no obligations with Chicago parties for* you to pay so please don't let that worry you. All arrangement with me in matters was contingent it was made with me only. *We took no steps but were looking up the law* when ready to proceed. Every time you have left me you have done so to your injury as events prove. You should not have done so in this case. However, I shall do all I can for your successful recovery of the money. All are well,

Hastily, NED.

Regards to sister and Anna.

629 "EXHIBIT T."

WASHINGTON, D. C., *Dec.* 22, 1895.

DEAR DR.: Yours rec'd. Rest your mind easy as to any ac. contracted by you through me. Such is not the case, and I'll do as you request as to the am't suggested. Nor did I engaged to proceed without your consent. Nor did I do so. Knowing all the facts, it was my duty to you to study up the law pertaining to such a case. As when you decided to proceed, it was necessary to go right, and to do so without delay. I told Messrs. Case and Hogan we could take no steps whatever without your consent, so there has been no misunderstanding whatever. I still think though that you did not treat me right in not allowing me *knowing more* of all the facts than any one in the world and being interested in your welfare to undertake to settle the matter, recover your money and bring that rascal to justice. However you have choosen to do otherwise, with the assurance though, that when required I shall render all the assistance possible in the matter.

Florence will find the hat and with pleasure I'll send by express to you. All the other little things shall be safely guarded and your rooms kept in order that is what I desire to do. You know that Thomas took about two baskets of the bric-a-brac with him.

I trust you, your sister and Anna with the big boy are all well and that Christmas will bring to you as much pleasure as possible

in your quiet home. There are no children there, so you will not see the merry time as we will. Paul still has faith in Santa Claus, that means much for him. Ned and Julia of course have grown away from the happy delusion. You must be happy in the
630 idea that in all places except when grief and poverty and sickness are present people are happy. So to you come the season with its joys.

With kindest regards and greetings to all of you
I am, affectionately, NED.

"EXHIBIT U."

WASHINGTON, D. C., *February* 6, 1896.

MY DEAR DOCTOR: I of course cannot advise you to do anything that you do not want to do and you know best whether or not you want to spend any money in getting any testimony at Saratoga. I can assist all that is possible with my own knowledge of matters and propose to do so.

It galls me very much to have to stand by and see that dastardly villian, who not only took you from me, but deliberately waylaid and robbed you, escape without some punishment in keeping with the crime. I should like to see him be, not only civilly, but criminally liable and hope sincerely that those gentlemen in Chicago will be quite successful in their efforts.

The winter has been pleasant here up to this time we have seebut a few flakes of snow and here two months of winter are gone. However, I must not boast because in February and March we have had some of our heaviest and longest storms.

With the exception of colds, all are well at home. Kind-
631 est regards to your sister and niece, and believe me to be, as always,

Affectionately yours, EDWIN.

"EXHIBIT V."

WASHINGTON, D. C., *June* 1, 1896.

MY DEAR DOCTOR: I was very much surprised today by a call from Anna. She tells me of the result of the case in Chicago, which resulted, of course, as it only could, in your favor.

It riles me exceedingly to know that Thomas will escape without criminal penalty. There are grievances that are even worse than dollars and cents being taken away from us. Things possibly that you cannot feel, but which I for you feel very keenly. Atrocities, committed by him, for which there is no redress at court.

Anna says the counsel there for Thomas feared very much that I might be present at the trial. Had it been so, the court would have learned much more of the truth than it had before it.

It is not necessary to review the instances of his conspiracy against you and of his plans, which he successfully carried out, but in which he was interrupted. I had watched around you for so

many years, *so faithfully*, and then to think that such a villian should come to rob yo, it is alike trying for both you and me.

Everything moves along quietly. The high winds that have disturbed elsewhere, have passed over us with the exception of a few trees being blown down, quite harmlessly.

632 Anna says you wanted some prints. Those grape pictures, I suppose. I will try to find them tonight for her, as she is up home. (Many things Thomas took that you never saw and possibly will not see again. He was what might be termed a pillager.) She also spoke of getting the little book upon the "Piper" genealogy. I will see if I can get it for you.

I am glad to learn from her that your health is good, as is also that of your sister.

All are well.

With sincerest regards, I am, as always,

Affectionately yours, EDWIN.

"EXHIBIT W."

WASHINGTON, D. C., *October* 20, '96.

MY DEAR DOCTOR: I sent you a letter on the 27th day of September, giving you an account of the storm, and also send you a letter on the first day of October, with enclosure; to neither of these have I received any reply.

I have observed also, of one further step in your affairs in the recording of the deed to Miss Whitney. I will not comment upon that at this time, but our relations are such that it seems to me that you might have consulted me upon the matter prior to taking such a step. In all of our relationship, I have done to you only what kindness and affection *has* prompted and have faithfully carried out my part of the sacred contract, and while I do not

633 for a moment wish to come between you and your good sister, who has been more than kind to you during the past two years, still there are tokens of affection between you and me which should not be slighted off.

I should very much like to hear from you.

Very affectionately yours, E. B. HAY.

"EXHIBIT X."

WASHINGTON, D. C., *November* 11, 1896.

MY DEAR DOCTOR: I beg to acknowledge the receipt of yours. There was a time when it was your pleasure to seek the advice and counsel of myself upon everything you did, and you never appealed in vain, and one thing is certain that no trouble or loss came upon you until after you permitted yourself to get away from such counsel, and fell into the clutches and under the influence of that designing, unscrupulous, and dishonest party in Chicago.

You are not willing to admit that you had any right to consult

me with regard to a deed, for this house here, being made to another party, upon which there is a difference of opinion between us. Our relationship has been that close and affectionate, and I have been especially particular in everything pertaining to your affairs, never to intrude myself, except for your advantage and at your request.

You say that the consideration was of your niece, who had attended to your business for two years; surely this does not
634 offset the fact that I was the only one for many years upon whom you depended, even when you- niece was not known to you. You should not allow your memory to be so weak in these matters, as to forget how near we were in all things.

I trust that you have fully explained to your niece and sister the exact situation, so that they will not for a moment liken to the party in Chicago, or consider me other than, as you always did prior to having them taken an interest in you, as a son by adoption. Those are your words and Mother Piper's words in all communications. The compact entered into between us is one more sacred than any paltry consideration of present or future and cannot by you be set aside at your pleasure, without a failure on my part to keep the same,

Your leaving for a visit was with the full intention of spending away a few weeks, and then returning to your home, and, as a token of your good will and faithfulness to the obligation, you did, of your own free will and accord, uninfluenced in any way and with sincere loyalty on your part, as a last act, make a last will and testament (confirmatory of several others that you made in the same direction), devising to me the property not only here but also in Chicago, which I appreciated as being an evidence of the recognition of our relationship and an overt act of your affection for me.

In consideration of all this, the whole matter should be fully explained to your niece, so that she may understand it perfectly.

There is no intention to effect your financial status in any way whatever by me, or to take away from your relatives the
635–644 affection that naturally would exist in yourself towards them, but it is my duty to call your attention to the facts just as they are.

This is the second attempt on your part to dispose of the property both here and in Chicago, so you had better advise your niece of the exact situation. I say this in justice to you, to her, and likewise to myself.

Of course, I do not suppose there will be any change whatever in our arrangements; I will hold the house as before, trusting to keep our arrangements agreeable to you in every particular.

The roof from the storm has been fixed, afterwards it became necessary to have the tinning overhauled, which has been done. There was an old bill that was standing before you went away, at the time of the fire by which the furnace was injured, which Chapel has often presented and his successor sends it now; it is for $130.00, which I have promised them to call to your attention, and did so a number of times while you were in Chicago. The sewer in the

street was also replaced and cost $70.00. I beg to call your attention to these two items.

With affectionate regard as always, I am,

Sincerely yours, E. B. HAY.

* * * * * * *

645 "EXHIBIT E. B. H. #71."

CHICAGO, *Oct.* 29, 1894.

DEAR EDWIN: I shall be obliged to spend the winter here with Dr. Thomas whose care have been under for a long time, and as I am not well enough to take the journey as I intended, I have engaged the Dr. who has business in New York to come home by way of Washington to bring my things which he is willing to care for with him taking what he judges best.

Yours very truly, R. U. PIPER.

646 "EXHIBIT E. B. H. #72."

The Baltimore & Potomac Railroad Company.

8 : Received at Wash., D. C., station on Nov. 8, 1894, from
: W. B. Moses and Sons the following-described property in
.... apparent good order (contents and condition of contents of packages unknown), to be transported to and delivered at the regular freight station of the company at ——, subject to all the conditions following and upon the back of this receipt, and to be delivered in like good order, subject to the said conditions, upon payment of freight and advanced charges and upon payment also of all charges accruing under the said conditions. (See other side.)

Marks.	Description of property.
Via	One crated chair.
Union line.	2 boxes books.
Consignee, R. U. Piper.	4 boxes picture-.
Place, 2903 Lake Park Ave.	1 box typewriter.
County, Chicago.	One crated trunk.
State, Illinois.	One crated book-case.
	One cheffoneir.
	One reclining chair.
	One armchair.
	One easel.
	One chest of drawers.

R. D. FRANKLIN, *Agent.*
LORRENS.

Duplicate.

* * * * * * *

647 "EXHIBIT E. B. H. #74."

SARATOGA SPRINGS, *September 2nd*, 1892.

DEAR SON EDWIN:

* * * * * * *

648 As ever affectionately, MOTHER PIPER.

649 "EXHIBIT E. B. H. #75."

SARATOGA SPRINGS, N. Y., *September 9th*, 1892.

DEAR SON EDWIN:

* * * * * * *

650 Thanks for the trouble you have taken.
Affectionately, MOTHER PIPER.

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"EXHIBIT E. B. H. #76."

SARATOGA SPRINGS, N. Y., *September 7th*, 1892.

DEAR SON EDWIN:

* * * * * * *

651 Affectionately, MOTHER PIPER.

"EXHIBIT E. B. H. #77."

SARATOGA SPRINGS, N. Y., *September 14th*, 1892.

DEAR SON EDWIN:

* * * * * * *

652 Affectionately, MOTHER PIPER.

653 "EXHIBIT E. B. H. #78."

SARATOGA SPRINGS, N. Y., *September 16th*, 1892.

DEAR SON EDWIN:

* * * * * * *

654 Sincerely and affectionately, MOTHER PIPER.

"EXHIBIT E. B. H. #79."

SARATOGA SPRINGS, N. Y., *October 3rd*, 1892.

DEAR SON EDWIN:

* * * * * * *

655 Again love to all,
Truly and affectionately, MOTHER PIPER.

656 "EXHIBIT E. B. H. #80."

SARATOGA SPRINGS, N. Y., *October 12th*, 1892.

DEAR SON EDWIN: We are always glad to get your dear nice letters, rejoice to learn that all are well and happy. * * * It will not be long before we shall be home if nothing happens to us on the way, a few days only now.

* * * * * * *

657 Affectionately, MOTHER PIPER.

"EXHIBIT E. B. H. #81."

SARATOGA SPRINGS, N. Y., *October* 21*st*, 1892.

DEAR SON EDWIN:

* * * * * * *

658 So we have promised to visit them if we live and are able from our home in Washington some time.

* * * * * * *

Affectionately, MOTHER PIPER.

Love to your father & mother.

(Bill of lading inclosed:)

The Delaware and Hudson Canal Co.

SARATOGA SPRINGS, N. Y., *Oct.* 20*th*, 1892.

* * * * * * *

Marked.	Articles.
Dr. R. U. Piper, 1512 Corcoran St., Washington, D. C. c. o. E. B. Hay, Esq. D. & H. Paid, $1.15.	Three (3) boxes Empire water. 360 lbs. Freight prepaid. O K.

R. B. BEATTIE, *Agent.*
F.

659 "EXHIBIT E. B. H. #82."

SARATOGA SPRINGS, N. Y., *October* 24*th*, 1892.

DEAR SON EDWIN:

* * * * * * *

Affectionately, MOTHER PIPER.

660 "EXHIBIT E. B. H. #83."

SARATOGA SPRINGS, N. Y., *October* 26*th*, 1892.

DEAR SON EDWIN:

* * * * * * *

661 Affectionately, MOTHER PIPER.

"EXHIBIT E. H. B. #84."

SARATOGA SPRINGS, N. Y., *November* 4*th*, 1892.

DEAR SON EDWIN: Your dear letter dated November 4th reached us last eve.

* * * * * * *

Dr. hoping to feel a little better has remained a few days longer

than we expected but I regret to say, he is not any better,
662 and dreads the journey home. If we are spared we shall see you soon, but will telegraph the day before as I said in my last.

* * * * * * *

As ever affectionately, MOTHER PIPER.

"EXHIBIT E. B. H. #85."

SARATOGA SPRINGS, N. Y., *November 13th*, 1897.

DEAR SON EDWIN: We as always were very glad to get your kind letter, we are glad to get them for many reasons but first of all because they assure us of your affection, which we believe in, and rejoice in as the longer we live the more we are compelled to doubt many professions of regard made to us, we are very sure of some friends however.

* * * * * * *

663 We shall now probably be with you soon if we are spared from all harm.

* * * * * * *

As ever affectionately, MOTHER PIPER.

Dr.'s health I fear has not improved much improved but I hope for the best.

This is why we have remained here longer than we expected.

664 "EXHIBIT E. B. H. #86."

SARATOGA SPRINGS, N. Y., *November 23rd*, 1892.

DEAR SON EDWIN: We expected to have been home a week or two before this, but our good Dr. advised my Dr. to remain a little longer to gain strength and be better fitted to take the journey home. I was delighted to stay as I like here very much and was of course glad to remain if the Dr. could be benefitted by thus doing.

* * * * * * *

We rejoice to hear that you are all well and happy. Dr. and myself send much love to all, not forgetting Hannah and Maggie, and Rose if with you. We are truly glad to hear that your good father and mother are well and enjoying themselves please give them our love, also to all friends who may be kind enough to inquire for us. We are glad to learn that your overcoat was returned, as it must be very inconvenient to lose a coat this weather. Our kind regards to Mrs. Dennis and family. I am much obliged for her kind message. We shall be with you before long, if no accident happens to us on the way. The telegraph will come the day before.

Affectionately, MOTHER PIPER.

665 "EXHIBIT E. B. H. # 87."

SARATOGA SPRINGS, N. Y., *November 26th*, 1892.

DEAR SON EDWIN: I have not as you might judge from my writing been partaking of strong waters, but must plead as an excuse for my miserably bad writing a bad cold taken in an unknown way, as such troubles generally come upon one. We expected to have sent you the long, long promised telegram, but our good Dr. has prescribed that the Dr. should remain here a few days longer but you may be assured the Dr. will return home as soon as possible.

Thanks for what you so kindly say about our much-valued friend Miss Smith, I hope nothing will prevent her making the long-promised visit this time.

We are truly glad to hear that your good mother and father are well and enjoying themselves please give them our love, as also to each and all of the home family, not forgetting Hannah and Maggie, I hope Florence's cold has left her ere this and that you are all well. Our good Dr. thinks that there is no air like "Saratoga air" and I think from what I learn that people live to a good old age here, they do die sometimes we see funerals pass occasionally but I suppose there were not natives. Dr. send- the most particular thanks to you for all your kindness but says tell Edwin I shall be home as soon as the Dr. thinks it will be best.

Our kind regards please, to all friends. Have you had any snow yet? We have had some but it was entirely gone before night.

As ever affectionately, MOTHER PIPER.

666 "EXHIBIT E. B. H. # 88."

SARATOGA SPRINGS, N. Y., *September 13th*, 1892.

MY DEAR FLORENCE:

* * * * * * *

667 Affectionately, MOTHER PIPER.

668 "EXHIBIT E. B. H. # 89."

SARATOGA SPRINGS, N. Y., *October 4th*, 1892.

My DEAR FLORENCE:

* * * * * * *

669 Affectionately, MOTHER PIPER.

"EXHIBIT E. B. H. # 90."

SARATOGA SPRINGS, N. Y., *November 21st*, 1892.

MY DEAR FLORENCE:

* * * * * * *

670 I cannot say now just when we shall start, but I am sure just as soon as the Dr. feels able any day of course we shall telegraph Edwin, the day before.

* * * * * * *

Affectionately, MOTHER PIPER.

* * * * * * *

671 "EXHIBIT E. B. H. #91."

Semi-annual Statement.

SARATOGA SPRINGS, N. Y., *Jan'y 4th*, 1893.

Dr. Piper in acc't with Dr. T. B. Reynolds.

Office hours: From 9 to 10 a. m.; 3 to 4 and 7 to 8 p. m.

To professional services rendered for self & wife, Dr., $70.00.

All bills presented August and February.

According to my custom, I hand you statement of account as it stands on my books at this date. A bill of items will be furnished on application.

Rec'd payment in full to date.

T. B. REYNOLDS.

"EXHIBIT E. B. H. #92."

Dr. R. U. Piper to Mrs. Coffinger, Dr.

To nursing $19 00

Jan'y 4, 1892.

Rec'd payment.

MRS. G. E. COFFINGER.

"EXHIBIT E. B. H. #93."

SARATOGA SPRINGS, N. Y., —— —, 189–.

M Dr. Piper bought of Adam B. Smith, agent, dealer in dry goods and carpets, hosiery, gloves, and notions, 416 and 418 Broadway.

Terms, cash.

Jan. 3.	1 gown, 2.00; 1 hose, 25	2.25
	⅛ silk, 1.00	75
		3.00

Rec'd payment.

ADAM B. SMITH.
L. H.

672 "EXHIBIT E. B. H. #94."

SARATOGA SPRINGS, N. Y., —— —, 189–.

M Dr. Piper bought of N. F. Roddy, dealer in millinery, fancy goods, & ladies' & gents' furnishing goods, cloaks, wraps, and mantels; corsets a specialty; 340 and 342 Broadway.

2 yds. illusion..... ..... 50 cents.

Rec'd payment.

N. F. RODDY.

673 "EXHIBIT E. B. H. # 95."

Irving P. Fitchett, pharmacist, 400 Broadway, wholesale agent for Fraser's tablet triturates, compressed tablets, physicians' supplies, etc., etc.

SARATOGA SPRINGS, N. Y., *January 1st*, 1893.

Sold to Dr. Piper.

1892.

Dec.	2.	2 bot. ginger ale	.20
	5.	12 syphons carbonated water	1.20
	6.	R 98938 and bot.	.45
	8.	R 98947 " "	.40
		R 98526	.30
	9.	Comb, 40c.; tooth powder, 25c.; tooth brush, 35c.	1.00
		Carbolic acid & bottle	.25
	10.	R 98959 & bot., 35c.; 1 pt. alcohol, .50, and bot.	.85
		3 syphons of soda, 50c.; R 98960, 40c.	.90
	11.	1 Pears' soap	.25
	12.	1 pkge. plain talcum .25	
		3 oz. French brandy & bot. .35	
			.60
	13.	¼ lb. bi. carb. soda	.05
	15.	R 98971 and bottle	.30
	16.	R 98960, 40c.; R 98976, 25c.	.65
	17.	1 pt. alcohol	.40
		4 oz. carbolic acid & bot.	.25
		3 " rose water " "	.15
	18.	1 Alpha fountain syringe No. 3	1.75
		1 H. R. syringe, 2 oz	.75
		1 Fairchild's peptonizing tubes	.50
	22.	R 98994 & bottle	.70
	24.	R 99003	.25
			12.15

Irving P. Fitchett, pharmacist, 400 Broadway, wholesale agent for Fraser's tablet triturates, compressed tablets, physicians' supplies, etc., etc.

SARATOGA SPRINGS, N. Y., *January 4th*, 1893.

Sold to Dr. R. U. Piper.

Jan. 1. Amount of bill in full to date 12.15

Received payment.

I. P. FITCHETT.

1, 4, '93.

674 *Decree.*

Filed March 9, 1898.

In the Supreme Court of the District of Columbia.

EDWIN B. HAY, Complainant,
vs.
ANNA V. WHITNEY ET AL., Defendants. } In Equity. No. 17942.

This cause came on to be heard and was argued by counsel, and upon consideration thereof it is by the court, this ninth day of March, A. D. 1898, adjudged, ordered, and decreed as follows:

That the complainant, Edwin B. Hay, is entitled to a conveyance in fee from the defendant Anna V. Whitney of all of lots numbered 139, 140, and 141, in George Emmons' subdivision of lots in square numbered 193, in the city of Washington, District of Columbia, together with the improvements thereon, said subdivision being duly recorded in Liber 12, folio 130, of the records of the surveyor's office of the District of Columbia.

It is further adjudged, ordered, and decreed that the said defendant, Anna V. Whitney, do make, execute, and acknowledge a deed of conveyance and deliver the same to Edwin B. Hay, complainant herein; which said deed of conveyance shall in proper manner and form and by apt words grant and convey unto the said Edwin B. Hay, his heirs and assigns, for his and their sole use and benefit forever, all of the right, title, and interest of the said defendant, Whitney, in and to the said lands and premises, to wit, all of lots numbered 139, 140, and 141, in George E. Emmons' subdi-
675 vision of lots in square numbered 193, in the city of Washington, District of Columbia, together with the improvements thereon, said subdivision being duly recorded in Liber 12, folio 130, of the records of the surveyor's office of the District of Columbia; which said deed and conveyance shall be so executed and delivered within ten days from this date, and that in default of such conveyance by her as herein directed this decree shall be considered and taken in all courts of law and equity with the same operation and effect as if such conveyance had been made, executed, acknowledged, and delivered conformably to this decree.

It is further adjudged, ordered, and decreed that the restraining order heretofore issued herein against the said defendant, Anna V. Whitney, restraining and enjoining her from prosecuting a certain landlord and tenant proceeding pending the final determination of this cause, more fully described in the proceedings herein, be, and the same hereby is, made perpetual.

It is further adjudged, ordered, and decreed that one-half of the total costs be borne by each party.

By the court:

A. B. HAGNER,
Asso. Justice.

From which decree the defendant Anna V. Whitney in open court, at the time of the signing thereof, appeals to the Court of Appeals; bond fixed at five hundred dollars.

A. B. HAGNER,
Asso. Justice.

676 *Stipulation of Counsel.*

Filed March 18, 1898.

Summary of supplemental proceedings in Hay *vs.* Whitney, referred to in the annexed stipulation.

On April 12, 1897, complainant, by leave of court, filed herein his supplemental bill, wherein, after reciting the substance of the original bill and the answers thereto, he averred that the defendant Anna V. Whitney, on January 29th, 1897, caused a thirty days' notice to quit the premises involved herein (No. 1512 Corcoran street) to be served on complainant, and that after the expiration of said period of notice she had instituted proceedings before Lewis I. O'Neal, a justice of the peace of the District of Columbia, under the landlord and tenant act, to dispossess complainant of said premises on the ground, as alleged by her, that a certain lease of said premises from her grantor, the defendant Piper, to the complainant had expired, and that the complainant had thereby become her statutory tenant by sufferance; and complainant in said supplemental bill prayed that said Whitney might be enjoined pending this suit from prosecuting said landlord and tenant proceeding- or otherwise disturbing complainant in his possession of said premises, and that on final hearing such injunction might be made perpetual. Defendants' solicitor acknowledged service of subpœna to answer said supplemental bill, and on hearing the injunction was granted as prayed, complainant being required by the court to give bond, with surety, in the penalty of five hundred dollars, conditioned for the payment of intervening rent and damages should the said injunction be thereafter vacated; which bond was given, approved, and filed accordingly.

677 Afterwards, to wit, on November 2, 1897, complainant exhibited his bill herein supplemental to said original bill and to said supplemental bill, wherein, after reciting the substance of the pleadings and proceedings theretofore filed and taken herein, he averred that on August 4th, 1897, the defendant Richard U. Piper departed this life; that by reason of all the premises complainant had become entitled to an immediate conveyance of the property involved herein, and that inasmuch as the said defendant, Piper, had during his lifetime, in violation of his contract, covenants, and agreements alleged by complainant, conveyed said property to the defendant Whitney in fee, complainant was now entitled to a decree for an immediate conveyance in fee thereof by the defendant Whitney, and complainant prayed for such decree and for all other appropriate relief. Thereupon, by writing signed and

filed in the cause, to wit, on November 2, 1897, it was stipulated by counsel that complainant might at once file said second supplemental bill (which he forthwith did), and that thereupon the defendants Whitney and Moore, trustee, should be deemed to have answered the same, admitting the death of said Piper, but denying the other averments upon which the complainant therein bases his prayers for relief, and that complainant should be deemed to have filed a general replication to said answers, and that thereupon the case should proceed to final hearing and decree upon the pleadings heretofore filed, the testimony, the said second supplemental bill, and the said stipulation.

678 In the Supreme Court of the District of Columbia.

EDWIN B. HAY, Complainant,
vs.
ANNA V. WHITNEY ET AL., Defendants. } No. 17942, Equity Docket No. 41.

The complainant and the defendant Anna V. Whitney, by their respective counsel, hereby stipulate and agree that the record for the appeal taken in this cause by said defendant from the decree passed by Mr. Justice Hagner, sitting in the above-entitled cause, shall consist of the following-named pleadings, papers, and documents only, to wit:

1. The original bill of complaint.
2. The answers of the defendants Whitney, Piper, and Moore.
3. The replication.
4. The "summary of supplementary proceedings" (written on two pages in typewriting), hereunto annexed and to be filed herewith, which shall stand and be read and considered in lieu of the copies of the supplemental bill, interloc-tory decree for injunction passed thereon, second supplemental bill, and stipulation of counsel in relation thereto.
5. All of the testimony and depositions on both sides, with the exhibits, excepting the copy of the deed from the defendant Piper to the defendant Whitney, filed by complainant on November 16, 1897, and excepting also, of course, the certificates and jurats of the several officers taking the depositions, which are admitted to be in due legal form.
6. The final decree.
7. The written opinion of Mr. Justice Hagner, should he file such opinion.

And it is hereby further stipulated and agreed by said parties relative to the deed referred to in the thirteenth paragraph of complainant's original bill that Richard U. Piper, as grantor, executed, acknowledged, and delivered, in legal form, unto the defendant Anna V. Whitney, as grantee, a conveyance in fee of the property involved in this suit, said deed having been executed and acknowledged at Newport, Maine, on the fourth day of August, A. D. 1896, and thereafter, to wit, on the seventeenth day of October of the same

year, recorded in Liber 2146, folio 349 *et seq.*, of the land records of the District of Columbia.

JEREMIAH M. WILSON,
A. A. HOEHLING,
For Complainant, Appellee.
B. F. LEIGHTON,
GEO. FRANCIS WILLIAMS.
For Defendant Whitney, Appellant.

679 *Memorandum.*

M'ch 18, '98.—Appeal bond filed.

680 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 679, inclusive, are true copies of originals in cause No. 17942, in equity, wherein Edwin B. Hay is complainant and Anna V. Whitney *et al.* are respondents, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 23d day of April, A. D. 1898.

JOHN R. YOUNG, *Clerk.*

April 25, 1898.—Time for filing transcript of record in Court of Appeals extended 30 days.

JOHN R. YOUNG, *Clerk.*

Addition to record entered this 24th day of May, 1898, by agreement of counsel.

B. F. LEIGHTON,
For Appellant.
A. A. HOEHLING, JR.,
For Appellee.

681 In the Court of Appeals of the District of Columbia, April Term, 1898.

ANNA V. WHITNEY, Appellant, }
vs. } No. 813.
EDWIN B. HAY, Appellee. }

Now comes the appellant, by her counsel, and states that one of the errors for which she prosecutes this appeal is in substance that the court erred in finding from the evidence that any valid contract for the conveying or devising of the property in controversy by the defendant Richard U. Piper to the complainant existed, and that

the court consequently erred in decreeing that the complainant was entitled to a conveyance in fee of said property from the said Anna V. Whitney as the successor in title of said Richard U. Piper, and she hereby designates, as necessary for the proper review in this court of the proceedings and record in said cause, to the end that said error may be corrected, the printing of the entire transcript of record filed herein, *excepting the parts or portions thereof hereinafter particularly referred to,* which she is advised and avers may be omitted from said printed transcript without injury to either of the parties and as unnecessary and immaterial.

First. Defendants' Exhibit No. 1, being copy of the original deed from Charles B. Pearson and wife, Mary E., to Richard U. Piper, whereby the former convey to the latter in fee, in consideration, as recited, of six thousand dollars, lots 139, 140, and 141, in George E. Emmons' subdivision of square 193, in the city of Washington, in the District of Columbia, said deed bearing date June 15, 1887, and being recorded in the land records of the District of Columbia, it being conceded that said lots (being the property involved herein) were duly conveyed by said deed to the said Richard U. Piper in consideration of six thousand dollars by him paid to said grantors (R., pp. 25, 26, 27).

Second. All after the signature and seal of George Moore
682 in Defendants' Exhibit No. 2 (R., page 29), said exhibit being a release of the property involved herein from a certain deed of trust in the proceedings mentioned, and said omitted parts being the certificate of acknowledgment, certificate of clerk of court to official character of the officer taking the acknowledgment, and the certificate of the recorder of deeds of the District of Columbia, showing that said release was recorded July 27, 1896, in Liber 2132, folio 313.

Third. Defendants' Exhibit No. 3 (R., pp. 31, 32, and top of 33), being a copy of the paper of which Defendants' Exhibit C (R., pp. 84 and 85) is the original.

Fourth. The formal certificate of the commissioner, A. W. Shepherd, who took certain of the depositions, and of the examiner who took the testimony. Said certificates appear on pages 164, 166, 109, and 147 of the Record. Omit also the oath of said Commissioner Shepherd, at page 151 of the Record.

Fifth. The title of the cause wherever it appears in the depositions and testimony.

Sixth. The exhibits below enumerated, being letters or telegrams addressed to and received by the complainant (in some instances by the wife of complainant), the gist of which are quoted in the testimony (in some instances the entire letter or telegram is quoted), except Exhibits E. B. H. 74 to 86, and 88, 89, and 90, which are not quoted in the testimony, but to the introduction of which defendants' counsel objected, and which are deemed immaterial, viz:

E. B. H. No. 1, letter from Dr. Piper, quoted from at p. 364.
" " 2, " Mrs. Piper, " " 364.
" " 3, " Dr. Piper, " " 365.
(Include E. B. H. No. 4 in printing transcript.)

E. B. H. No. 5, letter from Mrs. Piper, quoted from at p. 365.
" " 6, " " " " 366.
" " 7, " " " " 366.
" " 8, " " " " 366.

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E. B. H. No. 9, letter from Mrs. Piper, quoted from at p. 367.
" " 10, " " " " 367.
" " 11, " " " " 368.
" " 12, " " " " 368.
" " 13, " " " " 368.
" " 14, letter from Dr. Piper, quoted from at " 369.
" " 15, " Mrs. Piper, " " 369.
" " 16, " " " " 370.
" " 17, " " " " 370.
" " 18, " " " " 377.
" " 19, " " " " 382.
" " 20, " " " " 382.
" " 21, " " " " 382.
" " 22, " " " " 383.
" " 23, " " " " 383.
" " 24, " Dr. Piper, " " 384.
(Include E. B. H. 25, letter from Dr. Piper.)
E. B. H. No. 26, letter from Dr. Piper, quoted from at page 402.
" " 27, telegram from Dr. Piper, quoted from at p. 402.
(Include E. B. H. No. 28.)
" " 29, letter from Dr. Piper, quoted from at p. 403.
" " 30, " " " " 403.
" " 31, " " " " 410.
" " 32, " " " " 410.
" " 33, " Mr. Hine, " " 412.
(Insert all of E. B. H. No. 34.)
" " 35, letter from Mrs. Piper, quoted from at page 413.
" " 36, " Mr. Hine, " " 413.
" " 37, " " " " 414.
" " 38, " Dr. Piper, " " 415.
" " 39, " " " " 415.
" " 40, " " " " 415.

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E. H. B. No. 41, letter from Dr. Piper, quoted from at page 416.
" " 42, " " " " 417.
" " 43, " " " " 417.
" " 44, " " " " 418.
" " 45, telegram from Dr. Piper, quoted from at p. 418.
" " 46, " " " " 418.
" " 47, letter from J. H. Frye, " " 418.
" " 48, telegram from J. H. Frye, " " 419.
" " 49, letter from Dr. Piper, " " 419.
(Insert E. B. H. No. 50.)
" " 51, letter from Dr. Piper, quoted from at p. 428.
(Insert E. B. H. No. 52.)

" " 53, letter from Dr. Piper, quoted from at p. 429.
" " 54, " " " " 430.
" " 55, " " " " 430.
" " 56, " " " " 430.
" " 57, " " " " 431.
" " 58, " " " " 432.
" " 59, " " " " 433.
" " 60, " " " " 433.
" " 61, " " " " 434.
" " 62, " " " " 435.
" " 63, letter from Anna V. Whitney, quoted from at p. 436.
" " 64, letter from Dr. Piper, quoted from at p. 438.

(Insert E. B. H. Nos. 65 & 66, being copies of wills, as alleged.)

E. B. H. No. 67, letter from Dr. Piper containing copious extracts from a book written by him, quoted from at page 500.

E. H. B. No. 68, letter from Dr. Piper, quoted from at p. 500.
" " 69, " " (per Thomas), quoted from at p. 501.
" " 70, letter from Dr. Piper, quoted from at p. 501.

685 (Insert E. B. H. No. 71, letter from R. U. Piper, and E. B. H. No. 72, being a receipt, &c.)

E. B. H. No. 73, letter from Dr. Piper, quoted from at page 503.
" Nos. 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, and 86, being letters from Mrs. Piper to complainant, offered by the latter, without quotation from them, on his redirect examination.
" Nos. 88, 89, and 90, being letters from Mrs. Piper to complainant, offered by the latter, without quotation from them, on his redirect examination.

(Insert E. B. H. No. 87, being last letter ever received by complainant from Mrs. Piper, and also insert E. B. H. No. 91, doctor's bill, and Nos. 92, 93, 94, and 95, receipted bills.)

B. F. LEIGHTON,
GEO. FRANCIS WILLIAMS,
For Appellant.

Service of copy of above acknowledged this 27th day of May, A. D. 1898.

A. A. HOEHLING, JR.,
For Appellee.

Endorsed: No. 813. April term, 1898. Anna V. Whitney *vs.* Edwin B. Hay. Designation of parts of record which appellant deems necessary to have printed. Court of Appeals, District of Columbia. Filed May 27, 1898. Robert Willett, clerk.

686 In the Court of Appeals of the District of Columbia.

ANNA V. WHITNEY, Appellant,
vs.
EDWIN B. HAY, Appellee. } No. 813.

Responding to the request of the counsel for the appellant to omit from the printed transcript certain parts of the record, the appellee, by counsel, consents to the following:

1. That the deed set forth on pages 25, 26, and 27 be omitted.
2. That all after "George Moore," in fourth line, page 29, and all upon page 30 may be omitted.
3. That Defendants' Exhibit # 3, pages 31 and 32, may be omitted.
4. That the formal certificates of the commissioner, A. W. Shepherd, and of the examiners who took the testimony, the same being on pages 164, 166, 109, and 147 of the Record, also the oath of Commissioner Shepherd, page 151, may be omitted.
5. That the title of the case, wherever it appears in depositions and testimony, may be omitted.
6. Omit Exhibit E. B. H. # 1.
" " E. B. H. # 2.
" " E. B. H. # 3.
" " E. B. H. # 5.
Include Exhibit E. B. H. # 4.
Omit Exhibit E. B. H. # 6.
" " E. B. H. # 7.
" " E. B. H. # 8.
" " E. B. H. # 9.
" " E. B. H. # 10.
" " E. B. H. # 11.
" " E. B. H. # 12.
" " E. B. H. # 13.
" " E. B. H. # 14.
" " E. B. H. # 15.
" " E. B. H. # 16.
" " E. B. H. # 17.
" " E. B. H. # 18.
" " E. B. H. # 19.
" " E. B. H. # 20.
" " E. B. H. # 21.
" " E. B. H. # 22.
" " E. B. H. # 23.
" " E. B. H. # 24.

687 Include Exhibit E. B. H. # 25.
Omit Exhibit E. B. H. # 26.
Omit Exhibit E. B. H. # 27.
Include Exhibit E. B. H. # 28.
Omit Exhibit E. B. H. # 29.
" " E. B. H. # 30.
" " E. B. H. # 31.
" " E. B. H. # 32.
" " E. B. H. # 33.

Include Exhibit E. B. H. # 34.
Omit Exhibit E. B. H. # 35.
" " E. B. H. # 36.
" " E. B. H. # 37.
" " E. B. H. # 38.
" " E. B. H. # 39.
" " E. B. H. # 40.
" " E. B. H. # 41.
" " E. B. H. # 42.
" " E. B. H. # 43.
" " E. B. H. # 44.
" " E. B. H. # 45.
" " E. B. H. # 46.
" " E. B. H. # 47.
" " E. B. H. # 48.
" " E. B. H. # 49.
Include Exhibit E. B. H. # 50.
Omit Exhibit # 51.
Include Exhibit E. B. H. # 52.
Omit Exhibit E. B. H. # 53.
" " E. B. H. # 54.
" " E. B. H. # 55.
" " E. B. H. # 56.
" " E. B. H. # 57.
" " E. B. H. # 58.
" " E. B. H. # 59.
" " E. B. H. # 60.
" " E. B. H. # 61.
" " E. B. H. # 62.
" " E. B. H. # 63.
" " E. B. H. # 64.
Include Exhibit E. B. H. # 65.
(See deposition G. S. Hine, page 167.)
Include Exhibit E. B. H. # 66.
Omit Exhibit E. B. H. # 67.
" " E. B. H. # 68.
" " E. B. H. # 69.
" " E. B. H. # 70.
Include Exhibit E. B. H. # 71.
Include Exhibit E. B. H. # 72.
Omit Exhibit E. B. H. # 73.

688 In Exhibit E. B. H. # 74 include date and heading, "Dear Son Edwin;" omit all the rest except closing, "As ever affectionately, Mother Piper."

In Exhibit E. B. H. # 75 include date and heading, "Dear Son Edwin;" omit all the rest except closing, "Thanks for all the trouble you have taken. Affectionately, Mother Piper."

In Exhibit E. B. H. # 76 include date and heading, "Dear Son Edwin;" omit all the rest except closing, "Affectionately Mother Piper."

In Exhibit E. B. H. # 77 include date and heading, "Dear Son

Edwin;" omit all the rest except closing, "Affectionately Mother Piper."

In Exhibit E. B. H. # 78 include date and heading, "Dear Son Edwin;" omit all the rest except closing, "Affectionately and sincerely Mother Piper."

In Exhibit E. B. H. # 79 include date and heading, "Dear Son Edwin;" omit all the rest except closing, "Again love to all. Truly and affectionately Mother Piper."

In Exhibit E. B. H. # 80 include date and heading, "Dear Son Edwin," and the line, "We are always glad to get your dear nice letters, rejoice to learn that all are well and happy." * * * (16th line) Include "It will not be long before we shall be home if nothing happens to us on the way. A few days only now;" omit all the rest except closing, "Affectionately Mother Piper."

In Exhibit 81 E. B. H. include date and heading, "Dear Son Edwin," and 1st line, page 658, "So we have promised to visit them after we arrive and are able, from our home in Washington some time;" omit all the rest except closing, "Affectionately Mother Piper."

In Exhibit E. B. H. # 82 include date and heading, "Dear Son Edwin," and closing, "Affectionately Mother Piper."

In Exhibit E. B. H. # 83 include date and heading, "Dear Son Edwin," and the closing, "Affectionately Mother Piper."

In Exhibit E. B. H. # 84 include date and heading, "Dear Son Edwin," and the line, "Your dear letter of Nov. 4 reached us last eve." Then omit all — the line on page 662, "Dr. hoping to feel a little better has remained a few days longer than we expected, but I regret to say he has not, and dreads the journey home. If we are spared we shall see you soon, but will telegraph the day before as I said in my last." * * * Omit all the rest except closing "As ever affectionately Mother Piper."

In Exhibit E. B. H. # 85 include date and heading and all down to and including the word "however," in the 9th line; omit from "however" down to the 11th line, page 663, and include "We shall now probably be with you soon if we are spared from all harm." Omit all the rest except the closing, "As affectionately Mother Piper," and also include the last three lines, "Dr.'s health I fear is not improved much improved, but I hope for the best. This is why we have remained here longer than we expected."

In Exhibit E. B. H. # 86 include date and heading and all down to and including the word "doing," on the 9th line, page 664; omit all from "doing" down to and including "Dr. Cook," 15th line, and include last five lines, "We shall be with you before long if no accident happens to us on the way. The telegraph will come the day before. Affectionately Mother Piper."

689 Include Exhibit E. B. H. # 87.

In Exhibit E. B. H. # 88 omit all except the date and heading, "My Dear Florence," and the closing, "Affectionately Mother Piper."

In Exhibit E. B. H. # 89 omit all except date and heading and the closing, "Affectionately Mother Piper."

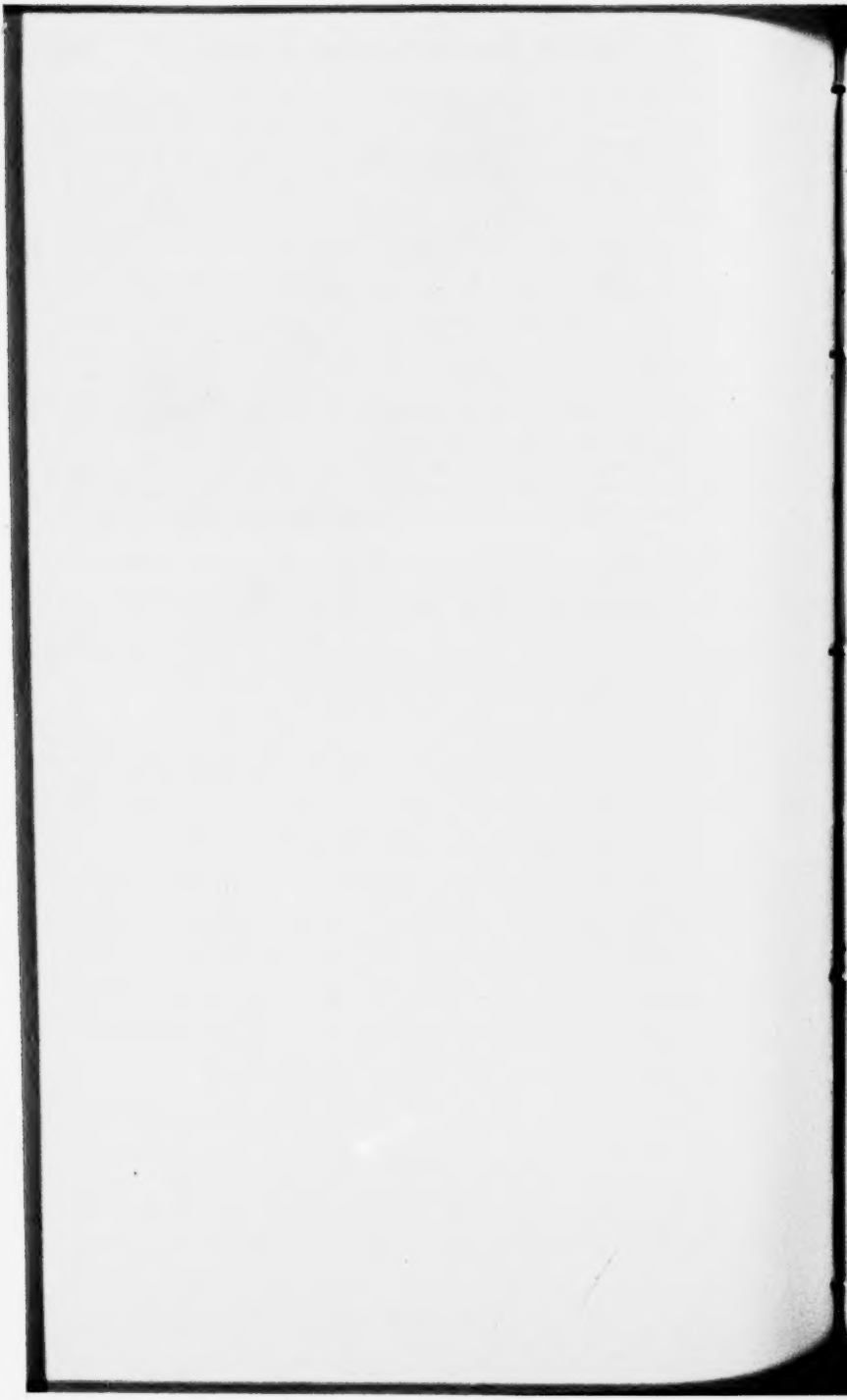
In Exhibit E. B. H. #90 omit all except date and heading, and in 7th line, page 670, "I cannot say now just when we shall start, but I am sure just as soon as the Dr. feels able anyway. Of course we shall telegraph Edwin the day before," and the closing, "Affectionately Mother Piper."

Include Exhibit E. B. H. #91.
" " E. B. H. #92.
" " E. B. H. #93.
" " E. B. H. #94.
" " E. B. H. #95.

A. A. HOEHLING, JR.,
For Appellee.

Endorsed: No. 813. Court of Appeals. Anna V. Whitney, appellant, *vs.* Edwin B. Hay. Designation by appellee of parts of record which may be omitted in printing. The clerk will please file. A. A. Hoehling, Jr., for appellee. Court of Appeals, District of Columbia. Filed Jun- 2, 1898. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 813. Anna V. Whitney, appellant, *vs.* Edwin B. Hay. Court of Appeals, District of Columbia. Filed May 23, 1898. Robert Willett, clerk.



310 THURSDAY, *March 23d, A. D.* 1899.

ANNA V. WHITNEY, Appellant,
vs.
EDWIN B. HAY. } No. 813.

On motion of Mr. B. F. Leighton, counsel on each side allowed one hour additional time in the argument of this case. The argument in the above-entitled cause was commenced by Mr. B. F. Leighton, attorney for the appellant, and was continued by Mr. A. A. Hoehling, Jr., attorney for the appellee.

FRIDAY, *March 24th, A. D.* 1899.

ANNA V. WHITNEY, Appellant,
vs.
EDWIN B. HAY. } No. 813.

The argument in the above-entitled cause was continued by Messrs. A. A. Hoehling, Jr., and J. M. Wilson, attorneys for the appellee, and was concluded by Mr. A. S. Worthington, attorney for the appellant.

311 ANNA V. WHITNEY, Appellant,
vs.
EDWIN B. HAY. } No. 813.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

1. This is an appeal from a decree sustaining the original and supplemental bills of complainant Edwin B. Hay filed to secure the specific performance of an alleged contract or agreement, whereby one of the defendants, Richard U. Piper, in consideration of the promise of complainant to receive him and his wife into his home for the remainder of their lives, and to furnish them board, and treat them with affectionate care as if parents, had agreed to make title by will to the complainant of lots 139, 140 and 141 of George Emmons's subdivision of square 193 in the city of Washington.

The defendants named in the original bill are Anna V. Whitney, of Newport, Maine, Richard U. Piper, and George Moore, trustee.

The contract, alleged to have been made between complainant and Richard U. Piper, was not in writing, and part performance of it is relied on to take it out of the operation of the statute of frauds.

The agreement is set out fully in the bill and as it will appear in a review of the evidence need not be stated here. The acts of part performance by complainant, consisting, in part, of the care and maintenance of defendant and his wife from March, 1887, to August, 1892, are also alleged and will be mentioned in reviewing the evidence.

It is further alleged that defendant Piper on July 1, 1888, made a will in pursuance of the agreement, devising the property afore-

said, with other property situated in Chicago, to the complainant in trust for his wife, Elizabeth F. Piper during her life, with remainder in fee to complainant; and another, December 8, 1892, during the last illness of Elizabeth Piper, devising all of his estate to complainant.

Defendant and his wife were then at Saratoga Springs, for their health. The wife died, and defendant Piper, being very weak in body and mind, was forcibly carried away to Chicago by one S. G. Thomas, who was his agent in that city for property situated therein. Whilst under the control of said Thomas and through his coercion, defendant Piper made a deed conveying the Chicago property and the Washington lots aforesaid to defendant Moore in trust for the security of certain contracts with said Thomas. This deed was dated October 17, 1893, and recorded in Washington September 18, 1895. (It has since been annulled by proceedings instituted in Chicago, and Moore, trustee, has executed a release to defendant Piper of the Washington property, which is made an exhibit to the answer of Anna V. Whitney.)

That Anna V. Whitney, a niece of defendant Piper, went to Chicago and took him to the house of her mother in Newport, Maine, where he has since remained. That, acting under the influence and control of his said niece, the said Piper conveyed the aforesaid Washington property to her by deed dated August 4, 1896, and recorded October 17, 1896, in the District of Columbia. Alleging performance of his agreement in the past and readiness to perform, present and future, and fraud in the execution of the conveyances aforesaid, complainant prayed an injunction, *pendente lite*, to restrain the defendants from encumbering or conveying the property, and for a decree declaring the defendant, Anna V. Whitney, to be a trustee of the legal title for the complainant, in accordance with the agreement between him and defendant Piper, and vacating the deed to defendant Moore, trustee.

The first supplemental bill was filed April 12, 1897, alleging the institution of proceedings for ejectment by Anna V. Whitney before a justice of the peace under the landlord and tenant act, and praying an injunction staying the same, which was granted.

A second supplemental bill was filed November 2, 1897, alleging the death of defendant Piper on August 4, 1897, and changing the prayer for relief against Anna V. Whitney to one for an immediate conveyance by her to the complainant in fee.

The answers of the defendants, Piper and Whitney, denied the contract or agreement set out in the bill.

2. It appears from the evidence that the complainant, Edwin B. Hay, was a lawyer residing in the city of Washington when his acquaintance with Dr. Richard U. Piper began. He was also an expert in handwriting. Dr. Piper had been a physician and was a man of scientific attainments. In later years his profession was that of an expert in handwriting.

The two became acquainted with each other in 1882 during a protracted trial in Yankton, Dakota, in which they were expert witnesses on behalf of the United States. They became intimate

and occupied the same room. Complainant was a young man about thirty-two years of age and Dr. Piper was about sixty-five. Dr. Piper was married, but had no children. His wife was a few years younger than he. They lived in apartments in Chicago, where the Doctor owned some real estate. At his request, complainant stopped at Chicago on his way home and paid him a visit, making then the acquaintance of Mrs. Piper. They met again in Philadelphia early in 1883, where they were also expert witnesses in the same case. Mrs. Piper was there also. By invitation of complainant, they stopped in Washington, on their way to Chicago, to pay a visit of a few days to him and his family, then living in a house of moderate size on P street. The visit was extended to about six weeks. During this visit Dr. Piper and his wife seemed to have conceived great affection for the complainant and his wife, Mrs. Florence Hay. Whilst at Philadelphia in January, 1883, Dr. Piper wrote a letter to complainant expressing his pride in him and concluding with the wish that he could call him his "big boy in deed and in truth." Constant correspondence was maintained between them after the Pipers returned to Chicago. Mrs. Piper wrote nearly all the letters on their side. These were generally addressed, "Dear son Edwin and daughter Florence," and signed, "Father and Mother Piper." December 23, 1885, Dr. Piper wrote to complainant as "My dear boy" and referring to news of the latter's recent illness said: "I wish that we were in Washington to look after you a little—perhaps we could help you some in that direction. By the way what do you think of our looking to your city as a residence for the few years still perhaps left to us? Suppose I could command, say twenty-five thousand dollars certainly, and perhaps nearly as much more, what would you think of it? We have no
312 relations or friends to whom we owe anything as to the final disposition of our estate. Good night, with much love to you all, son, daughter, grandchildren and all." On January 14, 1886, Dr. Piper and his wife, about to leave for San Francisco, where he was employed in a case, wrote as follows:

"DARLING EDWIN AND FLORENCE: You will appreciate, dear ones, the estimation in which we hold you when I tell you that I have today written a will from the Doctor's dictation, and with my full approval, in which we bequeath to you the whole of our property with the exception of a few legacies amounting to about five hundred dollars. This will is deposited with Judge Charles H. Wood, 126 La Salle street, Oriental building, a fine noble gentleman, whom Edwin will like and one who will be glad to get him to attend to any business which he may have in Washington. In case of Doctor's death Edwin and I are appointed executors of the Doctor's will. In case of our death by accident on the journey, Edwin will attend to all business connected with all property left by us, which with the exception of the legacies goes to Edwin as above stated. He will of course find the will deposited as above said with Judge Wood, and with it, a schedule of property, and also a key to box in safety deposit vault of First national bank, containing property

as set forth in schedule above noticed. Edwin will look after this matter as soon after our death as possible, as there are some things in the papers with the will which will need immediate attention.

"As ever affectionately,

"FATHER AND MOTHER PIPER.

"In case we are killed on our journey, going or returning, Edwin will find in connection with the will, what we would desire to have done with our remains."

June 8, 1886, a letter similarly addressed and signed, reads thus, as copied in the record:

"And now dear children I need not tell you how much we want to see you and the darling children. * * * When we meet, which we shall do some time if nothing providential prevents, when I trust all can be arranged to the satisfaction of you our dear children and ourselves. * * * Mr. Hyde, to whom we introduced you, is an excellent man, knows nothing of the relation we bear to each other particularly, only of course we tell him as we do everybody that you and yours are very dear to us, and that we look upon you as our children, we did not enter into further particulars."

Affectionate letters continued to pass, and one written by Mrs. Piper and signed as usual, "Father and Mother Piper," contained this sentence: "We shall be most happy to come to Washington, when it is convenient all around; more of that dear Edwin and Florence, if we reach Chicago in safety."

November 7, 1886, another letter enclosed a dupiicate draft of the Bank of California on a Chicago bank for $5,300, which was sent, as explained, to insure against loss should Dr. Piper and wife meet with an accident on their way east.

Another letter of November 19, 1886, states cash on hand of $20,000 and asks complainant's advice as to its investment. It seems that Mrs. Hay was averse to taking Dr. Piper and Mrs. Piper into her house, but finally consented and in the spring of 1887 she joined her husband in expressing consent. In reply to this came a letter of March 11, 1887, addressed, "My dear son Edwin," as follows:

"I feel, however, that the Doctor must go somewhere before that time, and if it is not perfectly convenient for us to come to Washington at present, we will wait and take a short trip to Colorado or somewhere else. Now my dear son and daughter, tell us the exact truth with regard to this matter, as there *should surely be no hesitation in stating facts between us.* Our best love to darling Florence and the babies, and a large share from us both for yourself.

"As ever affectionately,

"FATHER AND MOTHER PIPER."

Another letter was written March 18, 1887, in which the following occurs:

"I felt very anxious about him, I am still; and as physicians and friends all insisted that a change was better for him than anything else, and he is so much attached to you all, that I ventured

to press the matter to our children, so I am sure you will appreciate. If we live and Doctor is able, I think we will start for W. some time next week, today being Friday the 18th. I would not come now as you are situated did I not feel so anxious about the Doctor, and I cannot get him started for any other place now, although he did think he would go to Colorado, but he dreads going among strangers.

"As ever affectionately,

"FATHER AND MOTHER PIPER."

March 25, 1887, they came to the house of complainant. Two rooms were given over to their exclusive use and they were treated as members of the family. They paid no board during their stay with complainant, from first to last, and contributed nothing to payment of expenses.

Complainant had, in the meantime, prepared for this increase of his family by making additions to his house, repairing, and so forth, at considerable expense.

Appreciating the desirability of more room, Doctor Piper had expressed the intention to buy lots and build a larger house. He and complainant soon agreed in selecting the Corcoran Street lots, aforesaid, which were purchased, paid for and conveyed to Dr. Piper. An architect and a builder were selected by complainant, and the erection of a house, planned to suit him and his wife, was begun August 1, 1887. In addition to meeting the wishes of complainant the house was made large enough to give Dr. Piper and wife a bed-room, sitting-room, private bath-room, and an extra room for his pictures, where he also occupied some leisure in painting. The house was completed about August 1, 1888, and all parties moved in and made it their joint home and lived as they had been doing.

Dr. Piper was a dyspeptic and required special articles of food. He required his meals to be served precisely on time: breakfast, 8 a. m.; lunch 12, and dinner at 6 p. m.

Necessity of conforming to these habits, and the size of the new house increased complainant's expenses considerably, through increase of servants, cost of coal, gas, water, and so forth. Doctor Piper was a man of whims, somewhat selfish, and was not
313 always easy to please. His wife appears to have been utterly unselfish and of a most affectionate nature. She was constant in her devotion to her husband's comfort and happiness, and in her efforts to insure the continuance of the happy relations of the new family. They remained in the house under the care of complainant and wife continuously until August 26, 1892.

On that day they went to Saratoga for the benefit of the Doctor's health, and did not return. She fell sick there and died January 3, 1893. Her remains were brought to Washington by complainant and deposited in the vault at Rock Creek cemetery. Dr. Piper being then feeble in body and mind, was unable to return.

Whilst in this condition he was removed to Chicago by S. G. Thomas, without the knowledge of the complainant and there kept

under his influence and control until about June, 1895, when the defendant, Anna V. Whitney, removed him to the home of her mother in Newport, Maine, where he remained until his death. Complainant seems to have made reasonable efforts, from time to time, to have him return to his home.

Dr. Piper was sometimes irritated during his residence with complainant, and expressed dissatisfaction at such times to a few persons; but seems to have been, in the main, as happy and contented as could be expected of one of his age and health. His affection for complainant was apparently great, and that of his wife was apparently very strong.

Many witnesses, with excellent opportunities of observation, testified to the uniformly excellent, kind, and affectionate care of Dr. and Mrs. Piper, by complainant and his family, from the time of their coming to his home in March, 1887, until their departure for Saratoga on August 26, 1892.

Among these witnesses were James Schouler, the eminent lawyer and author, and his wife. The latter was a cousin of Mrs. Piper. They made frequent visits to Washington during the time, and their relations with Dr. and Mrs. Piper were intimate. Mrs. Schouler testified that "they expressed themselves as being very happy in the mutual relations existing between themselves and Mr. and Mrs. Hay. They were treated in the household as if they were their own parents—with the utmost kindness, consideration and affection."

One of Dr. Piper's peculiarities seems to have been the frequent making of wills. In all of these, during that period, complainant was remembered. Notwithstanding the will made before coming to Washington, he thought it best to make another after the purchase of the Corcoran Street property. He caused this to be prepared by a lawyer and with special mention of that property, left his entire estate, with the exception of some small legacies, to complainant.

Some testimony was introduced by the defendants going to show that he was somewhat dissatisfied with his relations with the complainant's family, one of the causes of which was Mrs. Hay's entering the Catholic church. Influenced by this state of mind, in June, 1892, he had a lawyer to prepare another will, and destroyed the former one.

By this will he left all of his estate to his wife, directing her, however, to pay $1,000 to his sister, Mrs. Whitney. The last clause was: "I desire that my wife shall at her death, if she so chooses, give Edwin B. Hay the sum of $10,000."

But it further appears that on the day before starting to Saratoga, August 25, 1892, he and his wife each made and signed wills. These were found in an envelope in the drawer of a table in their rooms in the Corcoran Street house more than two years afterwards.

This will of Dr. Piper, conditioned upon the predecease of his wife, gave $2,000 to Mrs. Whitney, $500 and one of his paintings to a brother-in-law, and the remainder of his estate, real and personal, to complainant, who was also appointed executor.

3. The facts above recited as relied on to show the part performance of an agreement relating to the property in controversy, are thoroughly well established. To them, concurrent with the testimony relating particularly to the terms of that agreement, must be applied the appropriate principles of the doctrine of part performance in equity through which the specific execution of verbal contracts, concerning land, may be enforced notwithstanding the provisions of the statute of frauds. Before stating this additional evidence and our conclusions therefrom, those principles will be considered.

(1.) The statute of frauds in force in this District is identical with the English statute of 29 Charles II.

The limitations upon the operation of that statute, imposed by the part execution of an oral contract, were thus explained in a recent case in the House of Lords by Lord Chancellor Selborne.

"It has been determined at law (and, in this respect, there can be no difference between law and equity), that the 4th section of the statute of frauds does not avoid parol contracts, but only bars the legal remedies by which they might otherwise have been enforced. * * * From the law thus stated the equitable consequences of the part performance of a parol contract concerning land seem to me naturally to result. In a suit founded on such part performance, the defendant is really 'charged' upon the equities resulting from the acts done in execution of the contract, and not (within the meaning of the statute) upon the contract itself. If such equities were excluded, injustice of a kind which the statute cannot be thought to have had in contemplation would follow. Let the case be supposed of a parol contract to sell land, completely performed on both sides, as to everything except conveyance; the whole purchase-money paid; the purchaser put in possession; expenditure by him (say in costly buildings) upon the property; leases granted by him to tenants. The contract is not a nullity; there is nothing in the statute to estop any court which may have to exercise jurisdiction in the matter from inquiring into and taking notice of the truth of the facts. All the acts done must be referred to the actual contract, which is the measure and test of their legal and equitable character and consequences. If, therefore, in such a case a conveyance were refused, and an action of ejectment brought by the vendor or his heir against the purchaser, nothing could be done towards ascertaining and adjusting the
314 equitable rights and liabilities of the parties, without taking the contract into account. The matter has advanced beyond the stage of contract; and the equities which arise out of the stage which it has reached cannot be administered unless the contract is regarded. The choice is between undoing what has been done (which is not always possible, or, if possible, just) and completing what has been left undone. The line may not always be capable of being so clearly drawn as in the case which I have supposed; but it is not arbitrary or unreasonable to hold that when the statute says that no action is to be brought to charge any person upon a contract concerning land, it has in view the simple case in which he is

charged upon the contract only, and not that in which there are equities resulting from *res gestæ* subsequent to and arising out of contract. So long as the connection of those *res gestæ* with the alleged contract does not depend upon mere parol testimony, but is reasonably to be inferred from the *res gestæ* themselves, justice seems to require some such limitation of the scope of the statute, which might otherwise interpose an obstacle even to the rectification of material errors, however clearly proved, in an executed conveyance founded upon an unsigned agreement." Madison *v.* Alderson, L. R., 8 App. Cas., 467, 474, 475.

Upon the grounds so well stated by Lord Selborne, or in accordance with other views, differently expressed but not different in point of substance, courts of equity early began, and have continued, to decree the specific performance of oral contracts concerning land, which could be specifically performed if in writing, where there have been certain acts of part performance materially changing the situation of the complainant in respect of the subject-matter of the contract.

"The general principle to be extracted from the authorities," says Mr. Justice Brown, "is that if the plaintiff, with the knowledge and consent of the promisor, does acts pursuant to and in obvious reliance upon a verbal agreement, which so change the relations of the parties as to render a restoration of their former condition impracticable, it is a virtual fraud upon the part of the promisor to set up the statute in defense, and thus to receive to himself the benefits done by the plaintiff, while the latter is left to the chance of a suit at law for the reimbursement of his outlays, or to an action upon a *quantum meruit* for the value of his services." Townshend *v.* Vanderwerker, 160 U. S., 171, 184.

(2.) The principle applies not only in the case of agreements where the date of the promised conveyance is fixed and certain, but also where it is unfixed and indefinite. Brown *v.* Sutton, 129 U. S., 238, 243; Townshend *v.* Vanderwerker, 160 U. S., 171; Lamb *v.* Hinman, 46 Mich., 112; Young *v.* Young, 45 N. J. Eq., 27.

It is also well settled that a promise as alleged in this case, to transfer the title by will is equally enforceable with one to transfer by deed. The material thing is the certain intention to transfer the property, and not the manner in which the transfer of title is to be effected Gupton *v.* Gupton, 47 Mo., 37 (cited 160 U. S., p. 184); Sharkey *v.* McDermott, 91 Mo., 647; Carmichael *v.* Carmichael, 72 Mich., 76, 85; Pfluger *v.* Pultz, 43 N. J. Eq., 440; Van Dyne *v.* Vreeland, 11 N. J. Eq., 370, 381.

In the cases cited immediately above, the agreement was between aged owners of land peculiarly situated, on the one hand, and younger persons—sometimes children and sometimes not of kin—on the other; the former promising to make title to the latter, by will, in consideration of personal services, care, maintenance, and the like, to be received during life. When the latter have been induced by the promise to change their mode of life, have assumed the new relation, entered into possession, and faithfully and completely performed the required services for a term of years, and the contract

has then been repudiated by the promisor, without justification, it does not lie in his mouth or that of his heirs or grantees with notice to resist a demand for the appropriate specific enforcement on the sole ground that the promised services were of such a nature as that in case the complainant had refused or failed to render them a court of equity might not be able to secure their certain and complete performance. Where there has been no such failure or refusal, the mere possibility of future difficulty on that account, ought not to be invoked on behalf of a wrongdoer.

The irreparable injury to the promisee, who has faithfully performed, the impracticability of his adequate compensation at law, and the consequent fraud that would be perpetrated upon him, furnish substantial and sufficient ground for his equitable relief by way of specific performance. See, also, Warren *v.* Warren, 105 Ill., 568, 574; Brown *v.* Sutton, 129 U. S., 238, 243.

(3.) In some of the cases where the promisor was living at the time of the decree, his title was respected during life, but a trust was declared in favor of the complainant, ripening into title at the promisor's death, and the latter was enjoined from making any other conveyance. Provision was also made for securing performance by the complainant of his obligation to the end. Where the promisor was dead at the time of the institution of the suit, or died *pendente lite*, the decree ran against his heirs-at-law or grantee to compel the immediate conveyance of the legal title.

(4.) The verbal agreement sought to be enforced must be a complete contract and certain in its essential terms. It must be clearly and distinctly proved substantially as alleged. The certainty of proof required to establish it is not absolute but reasonable. Neale *v.* Neales, 9 Wall., 1, 12; Pomeroy, Specific Performance, sec. 137; Mundy *v.* Jolliffe, 5 Myl. & Cr., 177. In that case (cited with approval in Neale *v.* Neales, *supra*), Lord Cottenham said: "Courts of equity exercise their jurisdiction in decreeing specific performance of verbal agreements, where there has been part performance, for the purpose of preventing the great injustice which would arise from permitting a party to escape from the engagements he has entered into, upon the ground of the statute of frauds, after the other party to the contract has, upon the faith of such engagement, expended his money, or otherwise acted in execution of the agreement. Under such circumstances, the court will struggle to prevent such injustice from being effected, and with that object it has
315 at the hearing, when the plaintiff has failed to establish the precise terms of the agreement, endeavored to collect, if it can, what the terms of it really were."

This means substantially, that the court will look to the situation and declarations of the promissor, the relations of the parties and the surrounding circumstances as disclosed by all the testimony, in aid of the direct evidence, to ascertain the necessary terms of the contract. This is what was done in the case of Brown *v.* Sutton, 129 U. S., 238, 242. Referring in that case to the incompetency of Mrs. Sutton and her husband as witnesses, and the absence of any correspondence or written words, and to the consequent difficulty

of proving a direct and specific contract, it was said: "Any such promise must be largely inferred from the situation and circumstances of the parties, and must depend almost wholly on verbal statements made by Mr. Kenyon (the deceased promissor) to others."

(5.) The acts done by the plaintiff in part execution must, as we have seen, not only have occurred after the agreement had been definitely concluded, and with the knowledge and consent of his promissor, but also have been of a nature such as to change the relations of the parties to each other to such an extent as to render a restoration of their former condition impracticable.

It is upon this change of relations, compensation for which cannot be readily and accurately estimated, that the courts of equity act, and it furnishes one of the reasons why the payment of the purchase-money alone is not regarded as sufficient. Something more is required, as, for example, possession. But this possession need not necessarily be exclusive, unless made essential by the nature and terms of the agreement.

As has been said by Judge Cooley:

"The reason why taking possession under an oral contract is recognized as a ground for specific performance when payment of the purchase price is not, is that in one case there is no standard for the estimate of damages when the contract is repudiated, and in the other there is a standard that is definite and certain. A purchaser who takes possession of land under an oral purchase is likely in so doing to change very considerably—perhaps wholly—the general course of his life as previously planned by him: and if he is evicted on a repudiation of the contract, any estimate of his loss by others must in many cases be mere guess work. The rule therefore rests upon the element of uncertainty, and not upon any technical ground of exclusiveness in the possession." Lamb *v.* Hinman, 46 Mich., 112.

It is in accordance with this doctrine that the qualified possession of those cases before referred to, as enforcing agreements for care and support, as in this case, has been held to be sufficient. See, also, Townshend *v.* Vanderwerker, 160 U. S., 171, 184; Watson *v.* Hinman, 20 Ind., 223, 226.

(6.) The proof of possession, and other acts of part performance of the contract relied on, must, according to all of the authorities, refer to and be consistent with that contract, as well as relate to and affect the land that is its subject. A more stringent rule has been insisted upon, and the following language of Chancellor Kent is relied on to support it:

"It is well settled, that if a party sets up part performance to take a parol agreement out of the statute, he must show acts unequivocally referring to, and resulting from, that agreement; such as the party would not have done, unless on account of that very agreement, and with a direct view to its performance; and the agreement set up must appear to be the *same* with the one partly performed. There must be no equivocation or uncertainty in the case. The ground of the interference of the court is not simply that there is proof of the existence of a parol agreement, but that there is *fraud*

in resisting the completion of an agreement partly performed." Phillips *v.* Thompson, 1 Johns. Ch., 131, 148.

If this language must be taken to mean, as has been declared in some decided cases, that the acts of part performance are not sufficient if they merely refer unequivocally to some agreement of the nature relied on, but must themselves be evidence of that very agreement and no other, it goes to an extreme that, in our opinion, is inadmissible. We think that the correct view is expressed by Professor Pomeroy, in his excellent treatise on Specific Performance (sec. 107). After an examination of the cases, he says:

"In the vast majority of cases the evidence establishing the part performance, and the acts of part performance themselves, when established, do not and, in the nature of things, cannot fully show what are the terms of the agreement alleged and relied upon by the plaintiff, nor are they introduced for any such purpose. The judicial opinions which, in unguarded and careless language, would require the acts of part performance to prove the exact contract as alleged, are in this respect clearly erroneous. The true rule is that the acts of part performance must be such as to show that some contract exists between the parties; that they were done in pursuance thereof, and that it is not inconsistent with the one alleged in the pleading. Whenever acts of part performance are made out, which thus point to a contract, the door is opened, and the plaintiff may introduce additional parol evidence directed immediately to the terms of the contract relied on."

The same doctrine is enounced in Fry on Specific Performance, secs. 559, 561. See, also, Shahan *v.* Swan, 48 Ohio St., 25, 37; Maddison *v.* Alderson, L. R. 8 App. Cas., 467, 479. In the case last cited, Lord Selborne quotes with approval the following language of Wigram, V. C., in Dale *v.* Hamilton, 5 Hare, 369:

"It is generally of the essence of such an act (of part performance) that the court shall, by reason of the act itself, without knowing whether there was an agreement or not, find the parties unequivocally in a position different from that which, according to their legal rights, they would be in if there was no contract.

"Of this a common example is the delivery of possession. One man without being amenable to the charge of trespass, is found in the possession of another man's land. Such a state of things is considered as showing unequivocally that *some* contract has taken place between the litigant parties; and it has, therefore, on that specific ground, been admitted to be an act of part performance.
316 But an act which, though in truth done in pursuance of a contract, admits of explanation without supposing a contract, is not, in general, admitted to constitute an act of part performance to take the case out of the statute of frauds; as, for example, the payment of a sum of money alleged to be purchase-money." See, also, Morphett *v.* Jones, 1 Sw., 181.

Our conclusion is that the acts of part performance should not be equally referable to some other and entirely different contract, or of doubtful applicability to the one alleged. They must unmistakably tend to show not only that there has been an agreement,

but also one of the character relied on, upon which it must throw light, and with which it must not be inconsistent in any material particular. Any more stringent rule than this, it seems to us, would be inconsistent with the weight of authority which holds that possession alone, taken with the knowledge and consent of the promisor, is sufficient part performance; for clearly, such possession would not furnish the proof of the terms of the agreement in respect of the particular title to be conveyed—whether by deed or will, in fee, for life, or for a term of years—though not inconsistent with either.

Take the case of Brown *v.* Sutton, *supra*, for example: the possession there shown was equally consistent, without further proof of the terms of the contract, with a promise to convey, by deed or will, in fee or for life, and even with the mere expectation of a devise, as was found to be the case in Maddison *v.* Alderson, *supra*.

As this last case has been relied on by the appellant, the grounds of its decision will be examined. The plaintiff was the house-keeper of Alderson, who died in 1877. She entered his service, in 1845, as a servant upon wages, and years afterwards became house-keeper. Wages amounting to about £24 had been permitted to accumulate until some time in 1860. She then contemplated leaving him, and was induced to remain by his promise to devise to her a certain tract of land. He did leave a will in which he devised to her the land for life, but it was invalid for want of the attestation of witnesses. There was no evidence of the promise but the testimony of the plaintiff herself. The enforcement of the contract was refused, but on the sole ground that there was no "definite contract for mutual considerations, made between herself and him at any particular time. There was certainly no contract on her part which she could have broken by voluntarily leaving his service at any time during his life; and I see no evidence of any agreement by her to serve without, or to release her claim to wages.

"If there was a contract on his part, it was conditional upon, and in consideration of, a series of acts to be done by her, which she was at liberty to do, or not to do, as she thought fit; and which, if done, would extend over the whole remainder of his life. If he had dismissed her, I do not see how she could have brought any action at law, or obtained any relief in equity." Per Lord Selborne, L. R., 8 App. Cas., p. 472.

The distinction, in respect of the point controlling the decision between that case and this is apparent.

Here, a "definite contract for mutual considerations" is alleged to have been made. Each was under obligation to the other, and neither was at liberty to withdraw without the consent of the other. As stated by the witness, James Schouler: "It was not optional for either party to terminate the arrangement without the consent of the other."

If, however, there were no difference between the two cases in respect of the obligation of the complainant to continue his care and support during life, we could not follow the decision in Maddison *v.* Alderson, because it is opposed, on that very point, to the decision

of the Supreme Court of the United States in Brown *v.* Sutton, *supra*.

There was no proof, in that case, that the promise was made to Mrs. Sutton in consideration of an express agreement by her to care for the promissor to the end of his life. The relations between them began some years before his purchase of the property in controversy, and promise to convey it to her. The promise of the conveyance, which he died without making, was in expectation that she would continue her care to the end of his life; but she could have terminated their relations at will without violation of any contract. The services that had been rendered by her, and their expected continuation during his life, were held a sufficient consideration for his promise, and, with the possession acquired, sufficient to entitle her to a decree against his heirs. The following extract from the opinion of Mr. Justice Miller is quite relevant to the leading facts of this case:

"There can be no question that Mr. Kenyon bought the property in dispute with the intention, clear and well defined in his own mind, that he was buying it for Mrs. Sutton; and when he came to build the house upon it there can be as little doubt that he erected it for her with the intention that it should be her house, expecting to live with the Suttons as long as he lived, and that it would go to her in the event of his dying before she did. It may be said, and it is true that this unexecuted purpose of his is not of itself sufficient to constitute a contract to convey to her the house, nor would it alone be a sufficient foundation for a decree; but it leaves the case in such a position that no very strong evidence is required that such a contract did exist, as it would be entirely consistent with all the other uncontradicted testimony in regard to what he had said and done and with the possession of the property by her. There is also quite a sufficient consideration for such a promise in the services, care and attention rendered by her to an old man in his declining years, in connection with the fact that at the time he bought this property he was very sure of receiving these attentions as long as he lived. The evidence shows that this expectation on his part was fully realized." 129 U. S., p. 242.

4. This brings us to the consideration of the evidence directed particularly to the agreement and its terms.

Complainant, testifying on his own behalf, stated the agreement as follows:

"Pursuant to the conversations we had had and the communications that had passed between us prior to their arrival, they
317 came to live with us as a mother and a father would come to live with children, and their dwelling with us was conditioned upon a covenant and agreement entered into that in consideration of permitting them to reside with us in this relationship during the balance of their lives and the services and care to be given to them that he would build a house in the city of Washington, District of Columbia, in which we should live together, and that at his death, not only the house, but all of his property should be willed to me."

Here he was interrupted by an objection to the evidence, which, having been disposed of, he proceeded—

"And Dr. Piper further stated that should I be taken away that he would provide for Mrs. Hay and the children as if they were his grandchildren and she his daughter, and that should both of us be taken away during his lifetime that he would likewise provide for the children, and that he would rear and raise them, and upon this Mrs. Piper and Dr. Piper, Mrs. Hay and myself shook hands, and the Dr. himself called upon Heaven to witness the sincerity of the agreement."

He further testified that Dr. Piper and wife were to pay no board, and that they made no contribution towards the family expenses during the years of their residence with him.

Mrs. Anna Kearfoot, a witness for the complainant, testified to the agreement substantially as stated by the complainant. She was living in the house at the time, was present when the agreement was restated by all of the parties, and saw them clasp hands in token of good faith.

A number of witnesses, whose veracity there is no good reason to doubt, testified to declarations made by Dr. Piper and his wife during their residence with complainant in the P Street house, during the construction of the Corcoran Street house, and after the removal of all parties to the latter, tending to establish the general terms of the mutual agreement as asserted by complainant. Among the most important of these are James Schouler, Esq., and his wife, whose relations with Dr. Piper and his wife have been heretofore stated. He said that his impression formed from all that he has heard was that the Corcoran Street house was built as a common home where Dr. and Mrs. Piper would live for the rest of their lives with the Hay family, and that they regarded Edwin B. Hay as an adopted son, substantially intending that he should have the property at their death. He could recall no particular conversation with Dr. and Mrs. Piper, but stated that all they had said at different times gave him the idea of the joint arrangement stated. On cross-examination he said:

"Ans. 4. I understood that the house was built expressly for the Pipers and Hays to live together during the lives of the old people, and then to go to Mr. Hay and his family in consideration of giving Dr. and Mrs. Piper a home. All his statements on this subject were the same on all occasions.

"Ans. 5. He always gave me to understand that the arrangement was to continue for life. I knew nothing of what was to be paid or the terms of board, but understood it was not optional for either party to terminate the arrangement without the consent of the other.

"Ans. 6. I never was informed whether there was any agreement in writing or not. I never was shown any such agreement and never was told of any specific terms of agreement.

"Ans. 7. My answer to the 19th interrogatory is founded on no special conversations, but on the general tenor of our intercourse.

"Ans. 8. I never saw any noticeable instances of care and affec-

tion while at the house of Dr. and Mrs. Piper. Both appeared well and there was no need of it. I never witnessed any ostentatious or affected demonstration of affection, and if there had been any I think I would have noticed it. Mr. Hay and his wife appeared simple and sincere, and the whole mutual intercourse was familiar and unstrained."

Mrs. Schouler's testimony was substantially similar. She stated also that her first information of the arrangement came from Mrs. Piper at Dr. Piper's request.

The evidence offered by the defendant of declarations made by Dr. Piper indicating his dissatisfaction with the arrangement and displeasure with complainant, and the fact of his change in his will has been referred to in the preliminary statement, and is comparatively unimportant. Nor do we give any weight to the testimony of Dr. Piper himself. He is contradicted on many material points by the statements made in his own letters, and by overwhelming proof of his declarations to the contrary.

It is just, however, to say that his whole deposition tends to corroborate the evidence of the impairment of his mind and memory after December, 1892.

The most important evidence on behalf of the defendant was produced on the cross-examination of the complainant. An instrument was shown him, the execution of which he admitted. It is a formal contract of lease between Dr. Piper and him, bearing date October 20, 1893. Dr. Piper lets him the Corcoran Street house from January 1, 1894, to January 1, 1897, reserving to himself the use of his private rooms. Complainant agrees to keep in repair, pay all taxes and pay lessor $200 per annum in quarterly instalments. There are the usual stipulations against subletting, for delivery of possession at end of term, and so forth. Dr. Piper was then in Chicago, under care of S. G. Thomas, and this lease was sent to complainant by mail, and executed and returned after the exchange of correspondence.

Complainant explained the causes which led him to execute the lease as follows:

"I signed the paper. It was upon the importunities of a letter from Dr. Thomas, purporting to be from Dr. Piper, stating that his rents were not coming in very rapidly, and that he was somewhat under expense, having to pay his board, and asking if I could be of any help to him in the way of an allowance. Realizing the situation of Dr. Piper, and not knowing what might be done by Thomas to rob both Dr. Piper and myself of the home, and wishing to make an allowance to Dr. Piper, to which he was entitled, I signed this lease, knowing that whatever might occur it would hold me in possession of the property at least during its existence, and that before
318 that time the adjustment of the matters by Dr. Piper and myself would be consummated, looking to his return home and his continuing with us, in accordance with our agreement. I complied with the terms of the lease, after it was signed by me, and I never denied the right of Dr. Piper to have an allowance made to him, if he so desired it."

He further said that this paper was not intended to release Dr. Piper from the original agreement, and that the allowance to him in lieu of board seemed justifiable whether made in that form or another.

Complainant's explanation is borne out by the following evidence:

Along with the lease the following paper was sent to him for execution and return:

"Whereas, certain dealings and agreements have heretofore been had and made between Edwin B. Hay and Richard U. Piper, among which were certain agreements and transactions in relation to the house No. 1512 Corcoran street, in the city of Washington, D. C., and

"Whereas, the said parties have, this day, made a full settlement of all amounts, accounts and agreements heretofore had, made and entered into between them:

"Now, therefore, I, Edwin B. Hay, do hereby acknowledge that I have received full payment and satisfaction of all the claims and demands in any way arising or growing out of any agreements or transactions heretofore had between the said Piper and myself; and further, that I have no claim or interest of any kind or nature in the premises above described, No. 1512 Corcoran street in the city of Washington, D. C., except the leasehold interest which I have therein under the lease from the said Piper, bearing even date herewith.

"In witness whereof, I have hereunto set my hand and seal this 20th day of October, 1893."

This paper complainant persistently refused to execute although Dr. Piper continued to request him to do so. In a letter dated April 19, 1894, after referring to the paper he said:

"I don't see why you cannot please me in this by doing as I have several times requested. You know I have treated you fairly in my will. Perhaps I have already done more for you than I ought." Another of the same purport bears date July 29, 1894. Dr. Piper subsequently told complainant that the whole was a part of a scheme of Thomas; and the fact showing his physical and mental condition, with Thomas's control over him, and his execution of the conveyances for Thomas's benefit strongly corroborate his statement. Thomas was aware of the relations of the parties and must have learned of the agreement between them from Dr. Piper. Upon no other ground than that there was an agreement of the kind claimed by complainant, can the insistence either of Thomas or Dr. Piper upon the execution of this release be accounted for. This must be included in the "certain dealings and agreements" referred to in the preamble. If complainant was nothing more than a tenant of Dr. Piper before, as is contended, what was the necessity for this release after he had executed a renewal of that lease and made its termination certain?

Taking into consideration all of the evidence showing the beginning of the relations of the parties and the acts performed by each

during the more than five years of their life together, there are but two possible explanations of the conduct of the complainant.

One is referable to the agreement which is the foundation of the suit. The other is, that, owing no duty to Dr. Piper and his wife, the complainant took them into his home, gave them board, and cared for them as if he were their son in fact, without contract or promise of reward, express or implied, but solely in the hope or expectation that they would voluntarily make a will in his favor.

In our opinion, the agreement has been substantially and sufficiently proved.

It affords the most reasonable explanation of the acts of the parties, and is consistent with all the surrounding circumstances.

Whilst such agreements are frequently unfortunate for all concerned, and not always commendable, they may, as we have seen, be specifically enforced.

The decree appealed from will be affirmed with costs.

Affirmed.

Mr. Chief Justice ALVEY, concurring:

I concur in the affirmance of the decree in this case, but, I must say, that I do so with great doubt and hesitation. The case on the facts as proved, shows a strong claim for compensation on a *quantum meruit*; but as a case for specific performance of an express contract, with the statute of frauds relied on as a defence, it is quite different, and presents great difficulty and doubt to my mind, both as to the proof of the specific contract alleged, and the part performance thereof, to take it out of the bar of the statute. I yield my doubts, however, in deference to the opinion of my brother judges.

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FRIDAY, *June 9th, A. D.* 1899.

ANNA V. WHITNEY, Appellant,
vs.
EDWIN B. HAY.
No. 813. April Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

June 9, 1899.

320 In the Court of Appeals of the District of Columbia.

ANNA V. WHITNEY, Appellant,
vs.
EDWIN B. HAY, Appellee. } No. 813.

Now comes Anna V. Whitney, the appellant in the above-entitled cause, by her attorneys, Messrs. A. S. Worthington, B. F. Leighton, and Geo. Francis Williams, and moves the court for the allowance of an appeal from the decision of the said Court of Appeals passed in said cause on the ninth day of June, A. D. 1899, to the Supreme Court of the United States, and asks the court to fix the bond on the said appeal.

A. S. WORTHINGTON,
B. F. LEIGHTON,
GEO. FRANCIS WILLIAMS,
Attorneys for Appellant.

It is hereby ordered that the appeal in the above-entitled cause be, and it hereby is, allowed, and the bond on appeal is fixed at five hundred (500) dollars.

R. H. ALVEY,
Chief Justice.

June 28th, 1899.

(Endorsed:) No. 813. Anna V. Whitney, appellant, *vs.* Edwin B. Hay, appellee. Motion for allowance of appeal to the Supreme Court of the United States, and order allowing appeal & fixing bond at $500. Court of Appeals, District of Columbia. Filed Jun- 29, 1899. Robert Willett, clerk.

321 Know all men by these presents that we, Anna V. Whitney, of the town of Newport, State of Maine, as principal, and Theodore I. Pease, of Springfield, Mass., as surety, are held and firmly bound unto Edwin B. Hay, of the city of Washington, District of Columbia, in the full and just sum of five hundred dollars, to be paid to the said Edwin B. Hay, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this sixth day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Anna V. Whitney and Edwin B. Hay a decree was rendered against the said Anna V. Whitney, and the said Anna V. Whitney having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Edwin B. Hay, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Anna V. Whitney shall prosecute said appeal to effect and answer all costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

ANNA V. WHITNEY. [SEAL.]
THEO. I. PEASE. [SEAL.]

Sealed and delivered in the presence of—
ABBY E. PIPER.
NAHUM C. PIPER.

Approved by—
R. H. ALVEY,
Chief Justice, Court of Appeals.

I consent to the approval of this bond.
A. A. HOEHLING, JR.,
Solicitor for E. B. Hay.

[Endorsed:] 813. Anna V. Whitney, appellant, *vs.* Edwin B. Hay. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed July 28, 1899. Robert Willett, clerk.

322 UNITED STATES OF AMERICA, *ss:*

To Edwin B. Hay, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Anna V. Whitney is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, — Justice of the Court of Appeals of the District of Columbia, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service of above citation acknowledged July 28, 1899.
A. A. HOEHLING, JR.,
Solicitor for Edwin B. Hay.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jul- 28, 1899. Robert Willett, clerk.

323 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-

written pages, numbered from 1 to 322, inclusive, contain a true and complete transcript of record and proceedings of said Court of Appeals in the case of Anna V. Whitney, appellant, *vs.* Edwin B. Hay, No. 813, April term, 1899, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of July, A. D. 1899.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 17,480. District of Columbia Court of Appeals. Term No., 366. Anna V. Whitney, appellant, *vs.* Edwin B. Hay. Filed July 29th, 1899.

In the Supreme Court of the United States

OCTOBER TERM, 1900.

No. 112.

ANNA V. WHITNEY, APPELLANT,

vs.

EDWIN B. HAY, APPELLEE.

BRIEF FOR THE APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Court of Appeals of the District of Columbia, affirming a decree of the Supreme Court of the District sitting in Equity.

On the 4th day of August, 1896, Richard U. Piper was the owner in fee of a parcel of real estate in the city of Washington, upon which there was a dwelling house known as No. 1512 Corcoran street, northwest. On that day Piper conveyed this lot with the improvements to his niece Anna V. Whitney. The original bill in this case was filed on the 8d day of December, 1896, by Edwin B. Hay against both Piper and Miss Whitney. It charges, in substance, that in March, 1897, Piper left Chicago, where he then lived, and came to Washington with his wife to live with the defendant, who at that time resided at No. 1535 P street, northwest, under an agreement to the effect that in consideration of Hay taking care of Piper and his wife as long as they lived they or the survivor of them—

> "would leave and convey by will or otherwise, all of the property, real and personal, of every nature and

> kind, wherever situated, to and unto this complainant, his heirs and assigns forever;"

that immediately after the Pipers reached Washington, it was agreed, "in consideration for the care of this aged couple," that the Pipers would adopt Hay as their son, and that Piper would build a house for the complainant for the joint occupation of himself and wife and the complainant and his family; that the complainant thereupon purchased the lot in controversy in this suit; and that a dwelling house was thereupon erected on that lot, into which all the parties moved on the 1st day of August, 1888 (Rec., 2, 3). The bill further avers that in August, 1892, Piper and his wife went to Saratoga, where shortly afterwards Mrs. Piper died; that upon the death of his wife, Piper became "temporarily mentally affected" and refused to return to Washington; and that one S. G. Thomas, a former business agent of Piper's in Chicago, forcibly took possession of Piper and his effects and carried him away to Chicago (Rec., pp. 3, 4). Finally, the bill charges that on the 4th day of August, 1896, Piper, who in the meantime had gone to live with his niece, Miss Whitney, in Maine, conveyed the ground in controversy to her. The bill avers that Hay and his wife had performed the alleged contract on their part so far as it was possible for them to do so, but avers that—

> "notwithstanding the performance and the readiness of the complainant to perform his part of the contract, the defendant (Piper) has persisted and still persists in remaining away" (Rec., p. 5).

The principal prayer of the bill is that the deed conveyveying the property in question from Piper to Anna V. Whitney should be declared a fraud upon the complainant and a violation of the contract between Piper and him, and that the defendant, Anna V. Whitney, should be decreed to hold the property in trust for the complainant in accord-

ance with the alleged agreement between him and Piper.

The bill did not waive answers under oath, and each of the defendants filed sworn answers, denying all the material averments of the bill.

Piper in his answer averred that Hay and his family were in possession of the house on Corcoran street by virtue of a *lease* from him, Piper, and not otherwise (Rec., pp. 16, 20). This averment was also made in Miss Whitney's answer, and she appended thereto a copy of the lease itself (Rec., p. 13, 42). This instrument will be referred to further on. In both answers it is averred in substance that Piper ceased to live with Hay because of certain disagreeable relations which had arisen between him and Mrs. Hay, and the children of Mr. and Mrs. Hay, which rendered his further abode with the Hay family unpleasant and undesirable (Rec., pp. 9, 17).

A good deal of testimony was taken in the case, an abstract of which is appended hereto beginning at appendix page 1 of this brief.

The deposition of the defendant Piper, in his own behalf, was taken on written interrogatories, Hay attending and cross-examining in person (Rec., pp. 28–41).

We have seen that in his bill Hay averred that he purchased the lot upon which the house on Corcoran street was built (Rec., p. 2). The answers deny this and allege that the lot was bought and the house built with Piper's money, except that Hay paid for some parts of the work; all the money which he so advanced being afterwards fully repaid to him (Rec., pp. 8, 16, 77).

While the suit was still pending, on August 4, 1897, the defendant Piper died, and thereafter the case proceeded against the defendant Anna V. Whitney alone (Rec., pp. 300, 301). The case came on for final hearing before Mr. Justice Hagner, who, on the 9th day of March, 1898, entered a decree requiring the defendant, Anna V. Whitney, to convey the property in controversy to the complainant (Rec., p. 299).

On appeal by the defendant, the Court of Appeals affirmed this decree (Rec., p. 327). The opinion of the Court of Appeals was delivered by Mr. Justice Shepard (Rec., pp. 311–327). Mr. Chief Justice Alvey delivered the following separate opinion:

> "I concur in the affirmance of the decree in this case, but, I must say, that I do so with great doubt and hesitation. The case, on the facts as proved, shows a strong claim for compensation on a *quantum meruit*; but as a case for specific performance of an express contract, with the Statute of Frauds relied on as a defense, it is quite different, and presents great difficulty and doubt to my mind, both as to the proof of the specific contract alleged, and the part performance thereof, to take it out of the bar of the statute. I yield my doubts, however, in deference to the opinion of my brother judges" (Rec., p. 327).

From the decree of the Court of Appeals, the defendant, Anna V. Whitney, duly perfected an appeal to this court (Rec., pp. 328, 329).

The property in controversy is of the rental value of from $850 to $900 a year (Rec., pp. 65, 66). The lot and house together cost about $21,000 (Hay, Rec., p. 248).

ASSIGNMENT OF ERRORS.

The court below erred:

1. In holding that the evidence in the case proves that a contract had been made by Richard U. Piper with the appellee, by which Piper agreed to devise to him the real estate in controversy.

2. In holding that the terms of the alleged oral agreement were established with sufficient certainty to justify a court of equity in decreeing a specific performance thereof.

3. In holding that the evidence established such part performance of the oral contract as would take the case out of the Statute of Frauds.

4. In holding that the appellee was entitled to a decree in his favor, notwithstanding the admitted fact that for over four years before the bill of complaint was filed and for about five years before the death of Piper, the appellee did not support him or his wife, or in any other way render service under his alleged contract.

5. In holding that there was sufficient mutuality in the alleged contract to make it the subject of specific performance at the instance of one of the parties thereto.

6. In not holding that the complainant's delay in attempting to enforce the alleged contract was a bar to his suit.

7. In not dismissing the bill.

ARGUMENT.

A simple reference to the alleged contract relied upon in the bill of complaint in this case and an analysis of the evidence bearing upon the question of the existence of such a contract, will, we think, render unnecessary any elaborate argument and of itself lead inevitably to the conclusion that all the assignments of error should be sustained. In making this statement, we bear in mind what was said by this court in another case which came up from the Court of Appeals of the District—Baker *vs.* Cummings, 169 U. S. 189–198—

> "that when two courts have reached the same conclusion on a question of fact, their finding will not be disturbed unless it be clear that their conclusion was erroneous."

The statement in the bill of complaint of the alleged

original agreement between Piper and Hay of March, 1887, is not merely vague, it is meaningless. The statement of that contract is that Piper and his wife, or the survivor of them, agreed that they—

> "would leave and convey by will or otherwise *all of the property*, real and personal, of every nature and kind, wherever situated,"

to the complainant. Whether this means all the property of both of them; or all of the property of one of them; or all of the property that they, or one of them, then owned; or all of the property that they, or one of them, might own at some time thereafter, there are no means of determining. As to the particular lot in controversy, the charge of the bill is that after the performance of the contract of March, 1887, had been entered upon, Piper and his wife further agreed to build a house—

> "which should be the property and a part of the estate of the said Richard U. Piper to be left by will to the complainant."

The bill does not even state whether any of the supposed agreements on the part of Piper were in writing or not. It is everywhere stated that he agreed and *covenanted* to do certain things. The inference would be that a written contract, under seal, was meant; but as a matter of fact it turned out that the agreements really relied upon were wholly verbal.

Unsatisfactory as are the statements of the alleged agreements in the bill, the testimony of the complainant himself on the same subject is still more vague. To appreciate this, it is necessary to read at least his examination in chief, which will be found on pages 176 to 228 of the Record. After giving a history of the relations between himself and Mr. and Mrs. Piper, prior to March, 1887, and producing certain letters from them or one of them to him, written during that period, the complainant said that in that month

they came to his house in Washington. He was then asked by his counsel under what conditions or arrangements they came to his house at that time. His answer was as follows:

> "Pursuant to the conversations we had had and the communications that had passed between us prior to their arrival, they came to live with us as a mother and father would come to live with children, and their dwelling with us was conditioned upon a covenant and agreement entered into, that in consideration of permitting them to reside with us in this relationship during the balance of their lives and the care to be given to them, that he would build a house in the city of Washington, District of Columbia, in which we should live together and that at his death, not only the house but all his property should be willed to me. Dr. Piper stated that should I be taken away that he would provide for Mrs. Hay and the children as if they were his grandchildren and she his daughter, and that should both of us be taken away during his lifetime, he would likewise provide for the children, and that he would rear and raise them, and upon this Mrs. Piper and Dr. Piper, Mrs. Hay and myself shook hands, and the Doctor himself called upon Heaven to witness the sincerity of the agreement" (Rec., pp. 184–185).

It will thus be seen that in his testimony, as in his bill of complaint, Hay claims that when the Pipers came from Chicago to Washington in March, 1887, and went to live with the Hay family at 1535 P street, they entered his house, and he received them, under a contract then existing, by which he was to care for them during the remainder of their lives, and Dr. Piper was to devise to Hay all his property. As for a long time prior to March, 1887, the Pipers were living in Chicago and Hay was living in Washington, all the communications between them on this subject were in writing. The letters upon which Hay relies as tending to show the existence of this contract have been produced and are in evidence (Rec., pp. 179, 180, 181, 182, 183, 184, 276).

Nearly all of them were written by Mrs. Piper. Many of them she signed "Father and Mother Piper." We aver with confidence that, even assuming what is not shown, that what was written by Mrs. Piper was known and authorized by Dr. Piper, there is not a word in any of these letters which tends in the remotest degree to show that there was any *contract* on the part of either Dr. Piper or his wife, that they would convey all their property, or any of their property, to the complainant. The principal letter is one dated January 14, 1886 (Rec., p. 180). In that letter "Father and Mother Piper" inform "Darling Edwin and Florence" that the Doctor has that day, with Mrs. Piper's approval, executed a will giving to Hay, or to Hay and his wife, all their property, except a few hundred dollars. It is plain from the language of this letter that this proposed disposition of their property by the Pipers was a voluntary act on their part growing out of the feelings of affection which they then entertained toward Hay and his wife. Several of the letters between January 14, 1886, and March 25, 1887, when the Pipers went to Washington, contain allusions to the fact that the property of the Pipers on their death is to go to the Hays, but in none of them is there any suggestion that this arises otherwise than out of the existence of the will of January 14, 1886. During the same period there are in the letters a few references to a proposed visit to Washington. In a letter dated October 5, 1886, written by Mrs. Piper and signed "Mother and Father Piper," the writer says:

> "We shall be most happy to come to Washington when it is convenient all around. . . . We long to see you all and if we live shall come when you are ready" (Rec., p. 182).

In a letter dated November 19, 1886, written by Mrs. Piper and signed in the same way, after asking Hay's advice as to investments, Mrs. Piper says:

> "Please write on receipt of this what you think of

> the matter, or is it best to wait until we come to W. and then invest" (Rec., p. 183).

In a letter dated March 11, 1887,—two weeks before the Pipers came to Washington—Mrs. Piper, still signing herself "Father and Mother Piper," writes that the Doctor must go somewhere, and that—

> "if it is not perfectly convenient for us to come to Washington at present, we will wait and take a short trip to Colorado, or somewhere else" (Rec., p. 184).

In a letter, written March 18, 1887, one week before they came to Washington, Mrs. Piper writes to Hay that she is anxious about the Doctor on account of his health, and adds:

> "If we live and the Doctor is able, I think we will start for W. sometime next week. . . . I would not come now as you are situated, did I not feel so anxious about the Doctor, and I cannot get him started for any other place now, although he did think he would go to Colorado, but he dreads going among strangers" (Rec., p. 184).

In considering these letters, it must be remembered that they are letters selected by Hay himself from a great many which he says he received from the Pipers about this time (Rec., p. 184).

It should be remembered also that when the Pipers went to Washington, in 1883, they stopped for a few days at Hay's house, and according to Hay's testimony they then suggested they would like to "spend the balance of their days" in Hay's family. But this proposition was distinctly declined by Mr. and Mrs. Hay (Rec., p. 177, 178, 179). So far as the testimony discloses, Hay did not meet either Dr. or Mrs. Piper after this visit in 1883, until they came to Washington in March, 1887, so that confessedly the foregoing selected letters are the sole foundation for Hay's claim that when Dr. Piper came to Washington in March, 1887

he did so under an agreement that if Hay would take care of him and his wife during the rest of their lives, they would convey all their property to him. In this connection we invite attention to that part of the opinion of the Court of Appeals which refers to this part of the case (Rec., p. 312, 313, 314), as showing that that court found nothing in the record inconsistent with the conclusion which we have just stated.

It is quite apparent, we think, that the facts in this matter are that prior to 1886 the relations between the Pipers, on the one hand, and the Hays, on the other hand, became exceedingly close and affectionate; that the Pipers in 1886 voluntarily decided to leave their property on their death to Mr. and Mrs. Hay; that influenced by the knowledge of this generous provision for them, they invited the Pipers to come to Washington and live with them; and that nothing occurred before their arrival in Washington, in March, 1887, which turned Piper's voluntary and revocable intention to so dispose of his property into a hard and fast obligation, from which he was not at liberty to recede.

Nor is there anything in the evidence to indicate that after the Pipers came to Washington there was any change in the situation of the parties in this regard.

It is true that from March 25, 1887, until August 1, 1888, the Pipers lived with Hay at his house on P street. There is no evidence that during that time they paid anything for their board and lodging. But soon after their arrival the lot on Corcoran street was purchased and an arrangement was entered into by the parties for the joint occupancy of the house on that lot, when it should be finished. That was a large house and Hay and his family were to have the use of all of it, excepting the few rooms to be retained for the exclusive use of Dr. and Mrs. Piper. The feelings of gratitude on the part of Mr. and Mrs. Hay towards the Pipers on account of the will which had been made in their favor in January, 1886, and their anticipation of soon enter-

ing and occupying for an indefinite period the large and more comfortable house on Corcoran street, fully accounts for the failure of Hay to charge the Pipers for their board during this period of sixteen months. This is substantially what Hay himself states. He says:

> "Realizing that this was to be a lifetime affair, and *as all their written communications had proved that they had done so much for us, we wanted to make home as delightful and as pleasant as possible*" (Rec., p. 186).

The evidence relied upon to establish the principal contract relied upon consists almost entirely of conversations between Piper or his wife and the witnesses, and there is very little, if any, of it that is not consistent with the theory that Piper's testamentary intentions grew out of his feelings of affection and friendship toward Hay and his family, and not out of any contract relations between him and Hay. Referring the court to the abstract of the evidence contained in the appendix to this brief, we proceed to refer more in detail to the evidence relating to the alleged specific agreement, by which it is claimed that Piper agreed to devise to Hay the house No. 1512 Corcoran street.

Regarding the averment of the bill that Hay purchased the Corcoran street lot, it is sufficient to say that in his own testimony the somewhat important fact is elicited that he paid for the lot with Dr. Piper's check (Rec., p. 190). Hay did indeed advance by way of a loan to Dr. Piper about one thousand dollars to pay for part of the work of finishing the house, but every cent of the money so advanced by him was paid back by Dr. Piper (Rec., pp. 193, 235, 237).

Mr. Hay testifies that his family and Mr. and Mrs. Piper moved into the house which is the subject of this suit, about the *first day of August, 1888* (Rec., p. 192). There is in the record a paper dated Washington, D. C., *July 30, 1888*, which was produced by Piper's counsel and exhibited

to the complainant while he was under cross-examination. The original paper on file in the court below is a typewritten document. Hay admitted that so far as it goes this paper was an "expression of the arrangement of the allowance" (Rec., p. 234, 5). It will be found on page 281 of the Record. It purports to be a complete statement of the agreement between the parties, and it in no way refers to any obligation on the part of Piper to devise this property to Hay. But it is a detailed and complete contract as to the terms upon which Piper and his wife on the one hand and Hay and his family on the other, are to live in the house into which they were all about to move when it was prepared.

It provides that as an equivalent for the occupancy of the house by Hay and his family, he is to furnish satisfactory board and fire, lights, and the attendance of servants for Dr. and Mrs. Piper, and that the agreement itself and consequently the right of Hay and his family to occupy the house, are to terminate with the lives of Dr. and Mrs. Piper.

In the latter part of August, 1892, Piper and his wife went to Saratoga Springs (Rec., p. 200). Shortly before Piper left Washington on this journey, he had several consultations with a lawyer, who was a neighbor of his and with whom he was very intimate, in reference to the preparation and execution of a will which he was about to make. This lawyer, Mark D. Brainard, testified that Piper submitted to him a form of a will which he, Piper, had himself written; that he, Brainard, made some corrections in this draft by lead pencil interlineations; and that the paper was then copied and executed by Piper in due form of law, as his last will (Rec., pp. 66, 67). The original draft as amended by the witness he had preserved and it is in evidence (Rec., pp. 74–75). By this instrument, which is dated June 23, 1892, Piper gave to his wife all his estate, except the sum of $1,000, which he bequeathed to his sister Victoria A.

Whitney, (the mother of the appellant in this case). At the end of the will is this paragraph:

> "I desire that my wife, Elizabeth A. Piper, shall at her death, if she so choose, give to Edwin B. Hay the sum of $10,000.00."

When the Pipers went to Saratoga, in 1892, they locked up the rooms which they occupied and took the keys with them (Rec., p. 215). Hay testifies that a long time afterwards when these rooms had been opened he found in them two testamentary papers, one written by Dr. Piper, and the other by his wife, of the existence of which he had no knowledge until they were thus accidentally brought to his notice (Rec., 215, 227). That one of these papers, which is said to be signed by Piper, gives to his sister, Victoria A. Whitney, two thousand dollars; to a brother in law, five hundred dollars and certain pictures; and to Hay the rest of Piper's estate. This instrument, while purporting to be signed by Piper, seems never to have been published as his will and has no attesting witnesses (Rec., p. 280). It was therefore void as to real estate in the District of Columbia. See Abert's Compilation, p. 557. The other paper, purporting to be signed by Mrs. Piper, has no date or witnesses, and simply provides that in case of the death of herself and husband near together, certain articles which are enumerated are to go to her friends.

The evidence is abundant that at least one reason why Piper left the house on Corcoran street and went to Saratoga ostensibly for only a temporary absence, was his dissatisfaction with his treatment. He so states in his deposition (Rec., pp. 30–36). To an intimate friend of himself and wife, Mrs. Sarah A. Wayne, he confided his troubles on two occasions, the last time just before he went to Saratoga (Rec., pp. 62, 63). Mrs. Piper joined in these complaints to Mrs. Wayne (Rec., p. 64). To the lawyer, Mr. Brainard, who drew the will of July, 1892, both Dr. and Mrs. Piper made

similar statements, the former being particularly emphatic on this subject when he instructed Brainard to draw the will in question and while Brainard was endeavoring to dissuade him from making that will (Rec., pp. 68, 69, 70).

Horace A. Piper was a distant relative of Dr. Piper. Although Mr. Hay met the witness frequently for two or three years while Dr. Piper was living with Hay, Hay ~~they~~ never mentioned to the witness the fact that he was living with Dr. Piper (Rec., p. 72). When he did find out that Dr. Piper was in Washington he visited his relative very little, because he and his wife got the impression from the conduct of Mr. and Mrs. Hay that they did not like to have them come to the house (Rec., pp. 71, 72). In several conversations with this witness, both Dr. and Mrs. Piper told him that their relations with Mr. and Mrs. Hay had become unpleasant, and he adds—

> "On the last visit they told us that they were going away, and the Doctor proposed to sell me his house" (Rec., p. 72).

The admissions made by Hay himself on this subject in his testimony, strongly corroborate the testimony of these witnesses so far as the trouble with Mrs. Hay is concerned (Rec., pp. 199, 240).

Early in December, 1892, while Mrs. Piper was lying ill at Saratoga, Hay went to that place. In Piper's deposition, in reply to the question whether he executed a will at Saratoga about the 8th of December, 1892 (Rec., p. 26), he testified (Rec., p. 31) that Hay came there trying to induce him, Piper, to make a will and give him, Hay, his property, and that possibly he might have signed a will of that kind. Says Piper:

> "He took me in his arms one time and clasped me to his breast. He came to the room where I was—vacant room—I was standing there—took me in his arms around me and clasped me to the breast. 'You must act with me, Doctor, you must act with me'" (Rec., p. 31).

Hay himself, when asked a question relating to an effusive letter which he wrote to Piper about this time, said it—

> "was written for the purpose of endeavoring to reason with and prevail upon the Doctor to cling to me rather than to anybody else" (Rec., p. 250).

There is no doubt that early in December, 1892, Piper did make and execute, in the presence of witnesses, a will making Hay the principal beneficiary of his estate (George S. Hine, Rec., p. 79; Francis E. Hine, Rec., p. 81; Hay, Rec., p. 226). Hay testifies that at that time the Doctor told him that he, Piper, had made a will bequeathing to his, Piper's wife, all of his property, but now that she was passing away he wanted to change it. Accordingly, sitting at the bedside of the dying woman, Hay wrote and Piper executed, in the presence of three witnesses, a will, dated December 6, 1892 (Rec., p. 203). This instrument, however, was left with Dr. Piper and apparently as soon as Hay went back to Washington, Piper tore up the paper (Rec., pp. 80, 226, 227). Mr. Hine, one of the winesses to the will, took the pieces out of the slop pail where Piper had thrown them, and gave them to Hay when he went to Saratoga the second time, immediately after Mrs. Piper's death, which occurred January 3, 1893 (Rec., pp. 80, 226, 227). Most of the fragments of this will have been put together and the instrument thus preserved will be found on page 82 of the Record. Although Hay says that the principal reason for executing this paper was that Piper believed that his wife was dying, yet by it he gives his entire estate to Mrs. Piper for life, and as to this very house on Corcoran street, directs that Mrs. Piper is to control it—

> "and to *rent it* and live in it, during her life, and receive from it for her support and *use the rents* and proceeds and profits" (Rec., p. 82).

All this is manifestly inconsistent not only with Hay's testimony of Piper's reason for executing this will (Rec., p.

203), but with the contract which he now claims was then in existence between him and Piper, in reference to the Corcoran street house.

A curious thing in this connection is that although Hay claims to have been ignorant until a long time afterwards of the existence of the unattested will in his favor made by Piper just before he left Washington to go to Saratoga (Rec., p. 227) yet in a letter dated November 11, 1896, written by Hay to Piper he said :

> "Your leaving for a visit was with the full intention of spending away a few weeks, and then returning to your home, and, as a token of your good will and faithfulness to the obligation, you did, of your own free will and accord, uninfluenced in any way and with sincere loyalty on your part, as a last act, make a last will and testament (confirmatory of several others that you made in the same direction), devising to me the property not only here but also in Chicago, which I appreciate as being an evidence of the recognition of our relationship and an overt act of your affection for me" (Rec., p. 291).

Mrs. Hine as a witness for the complainant testifies that Piper executed another will at Saratoga after his wife died (Rec., p. 82). And Hay testifies to the execution by Piper of apparently still another testamentary document about the same time giving his nurse "fifteen thousand dollars or some amount of money" (Rec., p. 249).

It is quite apparent that during some part of his stay in Saratoga, Dr. Piper had become mentally incompetent to execute any legal paper. Hay testifies that this mental incompetency did not begin until after Mrs. Piper's death (Rec., p. 243). But his own witness testifies that this condition lasted about four or five weeks and that it commenced about a week before Mrs. Piper's death (Rec., p. 80). And Miss Whitney says that while Mrs. Piper was on her sick bed at Saratoga she very frequently wrote to Mrs. Whitney about her husband's illness (Rec., p. 56).

On January 5, 1893, immediately following Hay's departure from Saratoga, after his second visit there, on which occasion he brought to Washington the remains of Mrs. Piper, the Doctor wrote to Hay, complaining in substance that Hay had made a prisoner of him (Rec., p. 206). To this Hay replied, January 7, 1893: "You are mistaken when you say that I have set a watch over you, to keep your friends away" (Rec., p. 284). Yet, on his cross-examination, Hay was compelled to admit that he had instructed the man who was nursing Piper—

> "to be very watchful and very careful not to allow any one to enter except the physician and those about the house in attendance on Dr. Piper" (Rec., p. 249).

The reasons which Hay gives for keeping everybody away from Dr. Piper, except those whom he designated, were—

> "that there was a conspiracy between the former nurse and an attorney in Saratoga for the purpose of obtaining from the Doctor money, because this attorney would go with the nurse and for every visit, like a physician, he would make a bill of so much" (Rec., p. 249).
>
> "So," says Hay, "I took the precaution, for Dr. Piper's interests, to see that these people did not approach him."

And that the physicians who had charge of Piper would not allow him to go to Washington, saying that he was not well enough to travel; which struck Hay as a—

> "scheme on the part of the attending physicians, as they were making three visits a day, and at $2 a visit; that was quite a big thing at Saratoga" (Rec., p. 205);

In this bill and throughout his evidence, one of the principal contentions of the complainant is that Thomas took Piper from Saratoga to Chicago against the latter's will. It

is worthy of note in this connection that Hay himself modified the blockade which he had created around Dr. Piper, so as to let Dr. Thomas see him, and that he did this because Thomas told him, Hay, that he thought he, Thomas, could prevail upon Piper to go to Washington, and Mr. Hay adds:

> "Mr. Thomas staid at Saratoga, but I could not stay there to watch him; my business called me to Washington, and I had to leave" (Rec., p. 256).

Piper remained in Chicago in Dr. Thomas' house from about January 9, 1893 (Rec., p. 208), until June, 1895 (Rec., pp. 57, 58). There is no question that during this time Thomas exercised undue influence over him for the purpose of getting his property.

It should be noted, however, that in the course of time a scheme was devised by which Piper could communicate with Hay without Thomas' knowledge, and that in a letter written by Piper himself to Hay on the 26th of August, 1893, Piper said: "Certainly I am treated with the utmost kindness and attention by Dr. Thomas and his family" (Rec., p. 211).

Hay avers in his bill and in his testimony in this case, that during the whole of Dr. Piper's stay in Chicago, Piper was old, infirm and weak minded and that Thomas had him in his clutches for the purpose of getting his property; but Hay never took any steps in any court for the protection either of Piper's person or of his property. Piper's own sister, Mrs. Whitney, for a long time did not know where he was. Finally in June, 1895, her daughter, Miss Whitney, the appellant, went to Chicago and took him to her mother's residence in Newport, where he spent the remainder of his days (Rec., p. 57, 58).

On September 4, 1893, Piper who was then in Chicago with Thomas, with his own hand, wrote to Hay as follows:

"DEAR NED: I am on my back as the result of a fall; looks as if it might be for a month, perhaps. *In order to settle matters between us in regard to the house, etc., I think you should come personally to Chicago*, perhaps as soon as convenient" (Rec., p. 212).

Hay testifies to the receipt of this letter, a bout the time of its date, and proceeds to state that he went to Chicago accordingly, and found the Doctor confined to his bed—that the Doctor wanted to go home to Washington with him but was suffering from the effects of the fall and could not go (Rec., p. 212).

So it will be seen by the testimony of Hay himself, shown to be true by this letter from Piper, which Hay produced and put in evidence, that Piper informed Hay of the injury which he had sustained and asked him to come to Chicago for the express purpose of settling matters between them in regard to the house in Washington. Yet, in his bill of complaint, Hay upon his oath said that on this occasion *Piper sent for him to come to Chicago to bring him home*; that he went to Chicago for that purpose, and *when he arrived there he found that Piper had injured himself* by falling down the stairs, so that it was impossible to remove him (Rec., p. 4).

Another significant circumstance in this connection is that although Hay testified that he went to Chicago in response to a request from Piper for the purposes of settling matters between them in regard to the very matter which is now in suit, he does not anywhere in his deposition, which covers nearly ninety pages of the printed record in this case, say a single word as to what, if anything, took place between him and Piper while he was in Chicago on this occasion, in reference to the proposed settlement. But what did take place between them at that time in reference to the matter of the house on Corcoran street is clearly inferred from what followed.

The most important piece of evidence in this case is the

lease of October 20, 1893 (Rec., p. 42). The instrument in evidence is signed by Hay alone. It was prepared, however, in duplicate, the copy signed by Piper having been kept by Hay (Rec., p. 215). The term of this lease did not expire until January 1, 1897. The bill was filed December 31, 1896, while Hay was in possession of the property in dispute, as Piper's tenant under this lease. Yet, *he concealed from the court the fact that such an instrument had ever been made.* In his evidence he says that he signed the lease "knowing that whatever might occur *it would hold him in possession of the property* at least during its existence" (Rec., p. 214). And the possession so obtained and held and concealed from the court is the possession which he relies upon as the part performance which is to take his case out of the statute of frauds.

Manifestly, it was of the utmost importance that the letter in which the duplicates of the lease were sent to Hay from Chicago should be produced. Hay's custom was to keep all letters from Piper (Rec., p. 215), and some dozens of them were produced in evidence. When asked by his counsel for this particular letter, Hay said that it seemed not then at hand, but that if he had it he would file it as an exhibit (Rec., p. 215). It was not filed, nor is there any proof that it had been lost.

We have, however, a subsequent letter dated December 5, 1893, by which Piper returned to Hay the copy of the lease which he, Piper, signed (Rec., p. 279). From this letter it appears that when Hay returned the copy of the lease to Piper to be signed by him, he also sent a receipt which Piper's attorney, whom Piper designates as "Judge Adams," did not think was quite explicit enough, and Piper accordingly inclosed in the letter for Hay's signature another "receipt," saying that he, Piper, did not see any especial difference between the two. This paper, like the lease, was dated October 20, 1893 (Rec., p. 279). It purports to be an acknowledgement by Hay of the satisfaction of all claims or

demands growing out of any agreements or transactions between Piper and himself, and the statement by him that he has no claim on the Corcoran street house, except the leasehold interest, under the lease from Piper of even date. This paper was not signed by Hay or returned to Dr. Piper. Hay testified that he refused to sign it; that this was the only wish of Dr. Piper's with which he did not comply, and—

> "that the whole matter of the lease, so called, was nothing more than a scheme of Dr. Thomas'" (Rec., p. 217).

But it is clear enough that this attempted settlement was Piper's act and not Thomas'. Several months afterward (July 29, 1894), Piper writes to Hay referring to this paper and urging Hay to send it to him (Rec., p. 280). On July 3, 1895, Piper wrote to Hay acknowledging the receipt of an installment of rent, and saying: "Would you not like the whole house providing we can make a treaty to that end?" (Rec., p. 218). October 23, 1896, he again wrote to Hay, saying:

> "Would you like to rent the house again after your lease expires? If so, you shall have the first chance" (Rec., p. 224).

The last two of these letters were written after Piper had gone to Newport, and when there was no pretense that he was any longer under the influence of Thomas.

Piper, at the best, was a crotchety and feeble old man, drifting gradually into second childhood. Hay was an active man of middle age, a lawyer by profession, and must be presumed to have known that any verbal arrangement he may have had with Piper in regard to the house on Corcoran street was void under the Statute of Frauds.

Even when Hay was advised of the recording of the deed from Piper to Miss Whitney, he set up no distinct claim against Piper in reference to that property. His letter to

Piper after he learned of that deed is dated October 20 1896, and is as follows:

> "My Dear Doctor: I sent you a letter on the 27th day of September, giving you an account of the storm, and also sent you a letter on the first day of October, with enclosure; to neither of these have I received any reply.
>
> "I have observed also, of one further step in your affairs in the recording of the deed to Miss Whitney. I will not comment upon that at this time, but our relations are such that it seems to me that you might have consulted me upon the matter prior to taking such a step. In all of our relationship, I have done to you only what kindness and affection has prompted and have faithfully carried out my part of the sacred contract, and while I do not for a moment wish to come between you and your good sister, who has been more than kind to you during the past two years, still there are tokens of affection between you and me which should not be slighted off. I should very much like to hear from you. Very affectionately yours, E. B. Hay" (Rec., p. 290).

By the lease dated October 20, 1893 (Rec., p. 42), which Hay signed and returned to Piper as above stated, Hay was to have the house in controversy as Piper's tenant for a period of three years from January 1, 1894. He agrees to keep the premises in repair; to reserve for Dr. Piper's use certain rooms, which are described; to pay the taxes on the property, and to pay rent in the sum of $200 a year, payable quarterly in advance. He further covenants that at the expiration of the term "he will yield up said leased premises" to Piper. But within the three years, on December 31, 1896, Hay began this suit. After the bill had been filed, and after the term of the lease had expired, Miss Whitney, as the then owner of the premises, undertook to get possession of the property by proceedings before a justice of the peace under the landlord and tenant laws of this District. Thereupon, a sup-

plemental bill was filed and the further prosecution of that proceeding was enjoined pending this litigation (Rec., p. 300).

In delivering the opinion of the Court of Appeals in this case, Mr. Justice Shepard conveys the impression that Miss Whitney's contention is that there was never any agreement between Dr. Piper and Hay in reference to the Corcoran street house, except the lease dated October 20, 1893. He says, in substance, that since Piper sent with the lease an instrument which he asked and expected that Hay would sign, which referred to "any agreements or transactions" between Piper and Hay, there is no escape from the conclusion that the other agreement referred to must have been the one claimed by the complainant (Rec., p. 326).

We respectfully submit that this is a mistake. In his answer Piper stated that—

> "arrangements were made with the complainant to board this defendant and his wife, and in order to better accomodate the family, which was thus augmented by the presence of the defendant and his wife, he decided to build a house in the city of Washington, which should be leased to the complainant, whereby this defendant and his wife could have more commodious rooms and be better situated and enable the complainant to provide better for their comfort and accomodation" (Rec., p. 16).

And in his deposition Piper stated:

> "I mean I lived with him, and boarded with him, with a verbal agreement to pay my board, and he was to pay me for occupying my house; he should occupy my house. I built a house and he was to occupy it and pay me in board; pay the insurance, pay the taxes, keep things in repair; and for furnishing me good and sufficient board. . . . Well, his agreement was that I have sufficient fire and heat in my room" (Rec., p. 28).

In Piper's letter to Hay of October 23, 1896, occurs this language:

> "Now as for the agreement about my boarding with you while you was in my house, you was to pay me $200.00 a year, furnish board for myself and wife, etc." (Rec., p. 224).

The unsigned paper of July 30, 1888, which was prepared a day or two before the parties moved into the Corcoran street house indicates that a contract with mutual obligations on each side was under consideration between Piper and Hay, in reference to their joint occupancy of the house (Rec., p. 281, 282).

Indeed, it seems obvious that there must have been some arrangement made between the two families as to the terms on which they were to jointly occupy the house 1512 Corcoran street. No doubt it was because there was some such arrangement, the carrying out of which any longer had become impossible because of Mrs. Piper's death and the removal of Dr. Piper from Washington, that the latter wrote his letter of September 4, 1893, to Hay, requesting Hay to come to Chicago to settle matters between them in regard to the house (Rec., p. 212). Hay and his family were then living in Piper's house, and the latter was getting no income whatever from it.

Nor would it follow, we submit, as Mr. Justice Shepard assumes, that if the "agreements and transactions" referred to in this unsigned paper of October 20, 1893, were agreements and transactions in regard to Piper's testamentary disposition of his property, that any reference was made to such a contract as is set up in the bill of complaint in this case. We have already gone over part of the testimony, tending to show that there was no definite and certain agreement between the parties in this regard; and we have referred the court to our abstract of the evidence, which will, we think, strengthen this conclusion.

We can not refrain, however, from inviting the attention of the court in this connection to parts of the evidence in this case which demonstrate that there was nothing definite even as to the person or persons to whom Dr. Piper (whether of his own volition or by contract) was to give his Corcoran street house by his will.

When Hay in person was cross-examining Piper, he asked Piper whether he did not enter into—

> "a covenant and contract, calling Heaven to witness, that in consideration of the complainant caring for you and your wife and you living with the complainant and his wife that you would regard and adopt *him and his wife* as your children, and would make a will leaving to *them* all your property upon the death of yourself and your wife" (Rec., p. 35).

About the time that the lot on Corcoran street was purchased, Piper and Hay together went to the office of a lawyer named William A. Cook (Rec., p. 190). While there Hay endeavored to get Piper make a deed conveying to him, Hay, the Corcoran street lot.

Piper declined to make such a deed; said that he preferred to make a will; that he did not believe in one parting with his property during his lifetime, and adding—

> "that if Edwin should be taken away that he would take care of Mrs. Hay and the children, and that if she were taken away, he would likewise care for and rear the children and at his death leave the property to *them*" (Rec., p. 244).

Mrs. Kearfoot, who had been living with the Hays in their house for thirteen years, tells of a conversation she had heard between the Pipers and the Hays in much the same terms (Rec., p. 266).

Mr. Brainard, the lawyer, who drew the will of July, 1892, for Piper, says he learned from the Pipers that they intended to make their home with the Hay family and to make Hay's *son* their heir (Rec., p. 69). At the time he

prepared that will, Dr. Piper destroyed another, and in the will which was so destroyed, according to Mr. Brainard's recollection there was a bequest, not in favor of the complainant, but his son (Rec., p. 71).

Again we invite particular attention to the testimony of William A. Cook, as to what took place in his office when Piper and Hay came there together for the purpose of having a will executed by Piper, which should give to Hay the lot on Corcoran street, which had then just been purchased by Piper. After Mr. Cook had testifed that Piper told him to prepare a will vesting the title to that property absolutely in Hay, the witness was asked by Hay's counsel to state what reasons Piper gave for making such a will, and he replied:

> "He told me that Mr. Hay as well as Mrs. Hay had been peculiarly kind and good (to use his own expression) to him, and that he felt it was only his duty to make a proper return to Mr. Hay, and that he desired to vest the title to the property in Mr. Hay" (Rec., p. 173).

Certainly this was the language of one who was about to confer a favor, and not comply with an obligation.

Mr. Justice Shepard (Rec., p. 324) lays a good deal of stress upon the testimony of James Schouler and his wife. But the testimony of these witnesses is very unsatisfactory (Rec., pp. 50–55). Mr. Schouler said that his imperfect hearing prevented him from engaging in general conversations, and that the impression which he got was formed in a large part from letters from Mrs. Piper to Mrs. Schouler, and from what Mrs. Schouler told him of her conversations with Mr. and Mrs. Piper. It is manifest throughout his entire deposition that pretty much all his information on the subject is through this double hearsay. This, taken in connection with the fact that he was so deaf that he could not

engage in ordinary conversation, would seem to make his testimony a very uncertain foundation for such a structure as has been erected upon it. As to Mrs. Schouler, all her information came from Mrs. Piper. She says: "I do not remember that Dr. Piper made any statement as to the disposition of the house." True, in the very next sentence, she says:

> "I have no doubt but that Dr. Piper informed me of the existence of this arrangement, but I do not remember just when" (Rec., p. 53).

But the arrangement, as Mrs. Schouler understood it, was not the contract sued on, because she says that arrangement was that Mr. and Mrs. Piper—

> "were to live with the Hays for the remainder of their natural lives, and that upon their death the house was to go to '*the Hays*,' and that they had made their wills to that effect" (Rec., p. 53).

On cross-examination she repeats, "that the house on Corcoran street was to go to Mr. and Mrs. Hay" (Rec., p. 55).

When it is remembered that at a time when there was no contract or arrangement of any kind between Piper and Hay—January 14, 1886,—"Father and Mother Piper" had written to "Darling Edwin and Florence" that the Doctor had made a will with Mrs. Piper's full approval, bequeathing to Mr. and Mrs. Hay nearly the whole of Piper's property (Rec., p. 180), it will readily be seen how easy it was for Mrs. Schouler and other witnesses to misunderstand casual remarks made by Mrs. Piper, or her husband, referring to this voluntary act on their part.

Hay's delay in taking any steps to enforce the alleged parol agreement should be taken into consideration in the disposition of this appeal. He had notice at least as early as January 5, 1893, that Piper did not recognize that he

was under any obligation to devise any part of his estate to him. In his letter of that date to Hay, Piper says:

> "You had better go slow in our business affairs. If I die without a will, my property goes to my brothers and sister. They, the brothers, are keen business men and will contend every inch" (Rec., p. 206).

Yet, for nearly four years from that time he took no steps either towards having Piper put in writing what he, Hay, claimed was the contract between them, or bringing any action or proceeding at law or in equity, to assert his claims either against Piper or against the property.

During the Chicago Exposition of 1893, Mrs. Schouler called upon Piper at Thomas' house and found him, as she says, "very feeble mentally and physically" (Rec., p. 55). It was through Mrs. Schouler that Piper's sister, Mrs. Whitney, learned of the death of Mrs. Piper at Saratoga (Rec., p. 56). By an anonymous letter, Piper's brother at Exeter, was notified that Dr. Piper himself was ill at Saratoga (Rec., p. 57). Mrs. Piper herself wrote to Mrs. Whitney from Saratoga about her husband's condition (Rec., p. 56). From all these things Mrs. Whitney became very much worried about her brother and at her instance, her daughter, the appellant Miss Whitney, on three different occasions came to Washington to get information as to Dr. Piper from Hay (Rec., p. 57). On both the first and second visits she testifies that Hay told her that he expected her uncle home any day—that he might "come home tonight or tomorrow" (Rec., p. 57). She further testifies that on her third visit Hay told her of Dr. Piper's condition in Chicago, whereupon she told Hay she would go to Chicago for him and bring him home (Rec., p. 57). She accordingly went to Chicago with a letter from her mother in which her mother asked her brother to come and spend the summer with her. This offer the Doctor accepted and Miss Whitney took him home to Newport (Rec., p. 57). She offered to take him to

Newport by way of Washington, stopping over at Washington, but the Doctor said that he preferred to go directly to Newport (Rec., p. 57).

It is singular, to say the least, that Miss Whitney had so little difficulty in accomplishing what Hay had failed for three years to bring about, getting Piper out of the "clutches" of Dr. Thomas.

Piper was now in the hands of those who were his natural protectors. They were among his next of kin and might reasonably have anticipated that after taking care of him during the remainder of his life, an interest in his property in Washington would devolve upon them by operation of law. In this situation and under these circumstances they undertook to take care of him. Hay, by his failure to act, had led them into this situation. Indeed, by executing and sending to Dr. Piper the lease of October 20, 1893, he had put it in Dr. Piper's power to convey to his relatives what was undoubtedly the Doctor's own understanding, and that was, that at this time Hay had no claim upon the Corcoran street house, except as a tenant under that lease. Therefore, even if no deed had been made to that house by Piper to Miss Whitney, Hay would have had great difficulty, as against Miss Whitney and her mother at least, in excusing his long delay to assert the claim which he now makes to the property.

We conclude this brief with a reference to our assignments of error and to a few of the leading cases on some of the points of law involved in the case.

The first assignment of error is sustained. On the whole evidence the complainant has failed to prove his case. He is in a court of equity. He has required and obtained answers under oath, and such answers in any case must be

overcome by clear proof. He asks specific performance of a contract. Every complainant in such a suit must establish the contract he sets up by cogent evidence.

Purcell *vs.* Minor, 4 Wall. 513.
Williams *vs.* Morris, 95 U. S. 444, 456.
Hennessy *vs.* Woolworth, 128 U. S. 438–442.
De Lollar *vs.* Hanscome, 158 U. S. 216–222.

In this connection, the language of this court in Nickerson *vs.* Nickerson, 127 U. S. 668–677, is quite pertinent.

> "Their evidence, in connection with all the circumstances of the case, especially the lapse of time, should be regarded as establishing, at most, only an honest belief and expectation upon the part of the appellant and her mother, before and at the time of the marriage, superinduced by the general conduct or loose expressions of the defendant, that he intended, at some time after marriage, to provide his wife with a permanent home out of the proceeds of the sale of the Portland property. It is the case of a husband, who, prior to marriage, induced in the mind of his intended wife expectations in reference to real property which, after marriage, he failed to meet, but in respect of which property he did not enter—and, perhaps, intentionally refrained from entering into any distinct and binding agreement."

The second assignment of error is also well taken. Even if the court could see that Piper made *some* agreement with Hay as to the disposition to be made of the house in question on his, Piper's, death, he has failed to show that that agreement was to devise it in fee to him. Nor is there any certain evidence as to just what Hay was to do as his part of the alleged contract. And where there is any reasonable doubt as to whether all the terms of the alleged agreement are before the court, specific performance will be refused and the complainant left to his remedy at law.

Colson *vs.* Thompson, 2 Wh. 336.
Dalzell *vs.* Dueber Manfg. Co., 149 U. S. 315–326.

As to the third assignment, it would seem to be especially strong. To avoid the Statute of Frauds the complainant relies upon his being in possession in part performance of the alleged oral agreement. But that possession is seen to have been held for nearly three years before the suit was brought under a written lease. Having retained possession under that instrument he can not be allowed now to claim that he is in possession under a different and wholly inconsistent agreement.

Ham *vs.* Goodrich, 33 N. H. 38.
Halston *vs.* Railroad Co., 51 Ga. 199.
Wood *vs.* Thornly, 58 Ill. 465.
Purcell *vs.* Minor, 4. Wall. 513.

Our contention in this regard has been misunderstood by the Court of Appeals (Rec., pp. 320–321). We are not asserting that in such a case it must be proved by direct evidence that the taking possession was under the very contract sought to be enforced. It may be sufficient to show that it was taken under some agreement between the parties and then establish by other evidence what was that agreement. But here we claim that since Hay admits that he signed the lease for the very purpose of enabling him to hold possession (Rec., p. 214) he must get out before he can set up the claim that by a contract between him and his landlord antedating the lease the landlord had divested himself of the power to control the property. No case so strong as this has come to our notice; but the cases above cited show that a possession held under some arrangement other than the one which the occupant seeks to enforce can not be treated as a part performance to take the case out of the statute.

The fourth error assigned relates to the admitted fact that for about four years before the bill was filed, and for five years before Piper's death, Hay did not support him.

Piper boarded with Hay only four years and a half. Hay does indeed claim that this was not his fault—that he was always ready to do his part. But certainly, there must be some point of time in contracts of this kind, at which, for a violation of it, the injured party's remedy would be by an action at law and not by a suit for specific performance.

See, on this point, Cox *vs.* Cox, 26 Gratt. 308.

The fifth error assigned is closely related to the fourth. Where the consideration of a contract is personal services to be performed by one of the parties, it can not be specifically enforced. As to the one party, the court will not undertake to compel him to render the services; and as to the other, he must fail, because unless the remedy is mutual equity will not interfere.

Rutland Marble Co. *vs.* Ripley, 10 Wall. 339–358, 359.

When all the services have been rendered—as in a case like this when the party who is to be benefited by the services is dead—the objection does not apply. But since during the period from August, 1892, when Piper went to Saratoga, till December, 1896, when this bill was filed, Piper could not have compelled Hay to "take care" of him, but would have had to resort to an action for damages, it is but just that Hay should be confined to the same remedy.

Lastly, the sixth assignment is based upon Hay's laches in bringing the suit. This depends upon principles so well settled in this court that no reference to the cases is required.

We respectfully submit that the decree below should be reversed and the courts below instructed to dismiss the bill.

B. F. LEIGHTON,
A. S. WORTHINGTON,
Solicitors for Appellant.

APPENDIX.

MEMORANDA OF TESTIMONY.

The terms of the alleged contract must be gathered from the testimony of numerous witnesses who depose to statements made to them at different times by the said Richard U. Piper and to the conduct of the parties thereto as observed by them, and from correspondence between appellee and the said Richard U. Piper. Following is a summary of said testimony and correspondence, so far as the same relates to the alleged contract, containing numerous literal quotations, submitted to aid the court in examining the same, and as tending to show that the intention which Dr. Piper at one time entertained of giving his property, or part of it, by his will to the Hay family was a mere voluntary undertaking on his part, and, further, that there never was such certainty and definiteness as to the way in which he was to benefit the Hay family as to enable a court to specifically enforce that intention, even if it had been the outgrowth of a contract based upon a sufficient consideration.

Edwin B. Hay, the complainant below, testified at great length in his own behalf, his testimony, with exhibits, covering pages from 176 to 298 of the Record.

He states that he first became acquainted with Dr. Piper in the year 1882 when they were both engaged for a period of six weeks in attendance on a trial at Yankton, Dakota, in which they participated as expert witnesses in the matter of handwriting; that the attachment between Dr. Piper and witness became at that time very great, and that upon the conclusion of the case witness stopped over at Chicago, to call upon Mrs. Piper, the Doctor's wife, whom he then met for the first time. In the year 1883 witness again met the Doctor and his wife at a trial, this time at Philadelphia,

where the Doctor and witness were engaged for many weeks (as expert witnesses), and upon the conclusion of that case Dr. Piper and Mrs. Piper made a visit, which extended over six weeks, to Hay, at the latter's home, 1535 P street, N. W., in Washington. Relative to this first visit, Mr. Hay deposes:

"They seemed very much delighted with the home and the home life, and suggested that they would like very much to spend the balance of their days with us; that they would be glad to treat us as their children; . . . that if we would consent to do so, he (Dr. Piper) would be willing to build a larger house in which we could live together; the proposition was not considered favorably at all, but on the contrary it was declined" (177, 178).

On January 14, 1886, the Pipers wrote a letter which they signed "Father and Mother Piper" to the Hays, whom they addressed as "Darling Edwin and Florence," which letter contained the following:

"You will appreciate, dear ones, the estimation in which we hold you when I tell you that I have today written a will from the Doctor's dictation, and with my full approval, in which we bequeath to you the whole of our property, with the exception of a few legacies amounting to about $500"

The letter then gave detailed information as to where this will was deposited (180).

Subsequent letters from the Pipers at Chicago to the Hays in Washington refer directly or indirectly to a will in which Hay was executor, as being still in existence (181, 182, 183, 184).

Prior to March, 1887, the Pipers renewed their proposition that they come to Washington to live with the Hays, and to this the Hays finally agreed (184).

Q. (By plaintiff's counsel). "Under what conditions or arrangements did the Doctor and his wife come to your house at that time?"

A. "Pursuant to the conversations we had had and the communications that had passed between us prior to their arrival, they came to live with us as a mother and father would come to live with children, and their dwelling with us was conditioned upon a covenant and agreement entered into that in consideration of permitting them to reside with us in this relationship during the balance of their lives and the services and care to be given to them, that he would build a house in the City of Washington, District of Columbia, in which we should live together, and that at his death, not only the house, but all of his property should be willed to me. (Objection.) And Dr. Piper further stated that should I be taken away that he would provide for Mrs. Hay and the children as if they were his grandchildren and she his daughter, and that should both of us be taken away during his lifetime, that he would likewise provide for the children, and that he would rear and raise them, and upon this Mrs. Piper and Dr. Piper, Mrs. Hay and myself shook hands, and the Doctor himself called upon Heaven to witness the sincerity of the agreement" (184, 185).

Being further asked by his counsel whether he had made any preparation for the reception of the Pipers before they arrived, witness answered that "realizing that this was to be a lifetime affair, and as all their written communications had proved that they had done so much for us," it necessitated the expenditure of considerable money in furnishing apartments for Dr. and Mrs. Piper (186).

As to his visit in company with Dr. Piper to the office of William A. Cook, Mr. Hay testified that immediately after Dr. Piper had purchased the lot on Corcoran street, upon which the new house was afterwards built, "the Doctor, then faithful to his covenant, was as willing to make the will to devise this property to me and as eager to do so as he was to purchase the lot, and insisted upon going at once (saying that we did not know what might happen) to consult an attorney with a view to making a will to cover this and all

of his property. . . . We detailed the entire circumstances of our relationship to Mr. Cook, and set forth exactly what the Doctor desired, and upon this memorandum or details of a will, Mr. Cook, as I am informed, made a will in accordance with our desire. . . . So he instructed Mr. Cook in my presence to make a will including this property in the District of Columbia, 1512 Corcoran street, and the lots upon which it stands, and all of his property wherever situated, especially naming that in Chicago, and devising all of the same to me in trust for his wife, and at her death to belong to myself, my heirs and assigns, forever" (190). Witness states further that Dr. Piper informed him that the will had been prepared in accordance with these instructions, executed, and deposited in a safe deposit company; witness supposes that this will was afterwards taken from that repository by Dr. Thomas on an order from Dr. Piper when the latter was living with Dr. Thomas in Chicago, after the death of Mrs. Piper (190).

Relative to the completion and occupation of the Corcoran street house, witness says (page 192) "the house was finished so that we moved in on or about the first of August, 1888, and possession of the house was turned over to us by Dr. and Mrs. Piper, and myself and my wife have been in possession ever since."

Prior to the completion of the house, while the Doctor was away in Cleveland in a case, witness received a letter from him, dated January 19, 1888, in which was the following: "You little know, I think, how good a letter from you seems to me, though but a little way from you, and if I could or should put in words all the love I feel towards you and Flora, and indeed, the children, I am afraid it would seem extravagant and perhaps unreal, and I must therefore be content to endeavor to show it in acts as time goes." "For Son Edwin" (192).

During the time the house was in process of completion Dr. Piper and witness were there together almost every day.

"Not only would Dr. Piper comment upon the builders and the method of building, but likewise upon the occupation of it together, anticipated by the Doctor and his wife. He felt proud of the fact, as he expressed it to me, and told anybody and everybody that he was building the house for 'My Son Edwin,' as he would speak of me both in my presence and in conversation with others in my hearing" (192).

It was intended originally to heat the house with furnace, but the contract in this respect was altered, at witness' request, as he was advised that steam heat was more economical in the long run, and a steam-heating plant was put in, and witness paid the difference in price amounting to $1,000.00, "of which the Doctor gave me three hundred and some dollars" (193). Witness states further that he also paid for putting in the chandeliers (about $300 or $400) and for the mantels (about $300), and that he afterwards gave receipts to Dr. Piper covering the amounts thus expended for chandeliers and mantels, by way of an allowance to the Doctor or contribution on the house, but that no money actually passed from Dr. Piper to him, and he was not reimbursed in any other way. His intention was to release the Doctor by giving these receipts for any claim for reimbursement (194).

Q. "About how many years did this living together of yourself and Dr. Piper continue? A. Six years." [Note: This includes nearly two years spent in the P street house before the Corcoran street house was built, as the latter was completed in August, 1888, and Dr. and Mrs. Piper left for Saratoga never to return in August, 1892. See page 200.]

During all this period, Mr. Hay testifies that he paid every expense of every kind and nature relating to the joint household or family, including gas and coal bills, and also that he paid the taxes on the Corcoran street house "from the time the house was built, up to the present time with the exception of the last half year's taxes."

Witness states in detail (pages 197–200) that the relations

of the Pipers and his own family continued of the most kindly and affectionate character, the former being entirely contented and happy in the home life, and that when Dr. and Mrs. Piper left (as it turned out never to return) for Saratoga, August 26, 1892, the most cordial relations between all parties existed, and that the object of the visit to Saratoga was to benefit the Doctor's health, and witness fully expected them to return to the home in a few weeks; that they had been on a visit to Saratoga once before (in 1891).

Q. "After the time spent at Saratoga did the Doctor recover from his ailments?" A. "The Doctor seemed not to get any better than he was when he went away. From the letters we received it appeared that the Doctor was improving today and down tomorrow. This necessitated the continued attention of Mrs. Piper upon him from morning to night, which finally broke her down" (p. 201).

"For some time after they went to Saratoga the letters were written by Mrs. Piper and the Doctor almost every day, until finally Mrs. Piper was taken sick and the Doctor became very much worried. We were interested in the collection of a claim against the Sharon estate, and his mind ran very much towards that money. The last letter ever written by Mrs. Piper was dated November 20, 1892, in which she complains that her handwriting is not as good as usual, because of her feebleness; but the Doctor upon November 30, wrote a letter in which he speaks of the claim against the Sharons and says in conclusion:

"If we do not get well and strong we shall of course expect you to come on and help us in going home. With much love, Father PIPER. Son Edwin." (P. 201). Letter in evidence, Exhibit E. B. H. 25.

Later Dr. Piper telegraphed witness to come on, and he complied (201). While at Saratoga on this occasion, witness, as amanuensis, wrote a will for Dr. Piper, from his dictation, Dec. 6, 1892, in which the Corcoran street property

and the Chicago property, and all his property with the exception of a few bequests, was devised to witness (203). [Note: This is the same will referred to in testimony of Mr. Hine as having been later rescued by him from a slop jar into which it had been thrown, after being "torn up," and is, in a mutilated condition, annexed to his deposition (Record, 82).]

This will was made, as witness states, in contemplation of the approaching death of Mrs. Piper, who was a beneficiary for life under former wills. Mrs. Piper died on January 3, 1893 (204), and witness went on to Saratoga and brought the remains to Washington, where they were interred. Dr. Piper was not sufficiently recovered to accompany witness, and remained at Saratoga ill, and "in a wild condition" brought about "by the death of his wife and by an over-injection of morphia, as I understand. I don't know that, but that is what they told me. He was very much disturbed at the loss of Mrs. Piper, though that did not seem to be the burden of his thoughts; it was 'money, money, money,' and that he was being robbed" (205). Witness visited him while in this condition to assist him home, and found in Saratoga Dr. G. S. Thomas, of Chicago, the agent who managed Dr. Piper's property there. Dr. Piper still insisting that he was not able to travel, witness returned to Washington, and a few weeks after learned that Dr. Thomas, "in the most cruel and shameful manner had carried Dr. Piper out of his bed to Albany and thence to Chicago."

Before the advent of Dr. Thomas, however, in fact the same day in which witness left Saratoga for Washington with the remains of Mrs. Piper, Dr. Piper wrote the following letter, dated January 5, 1893 (Ex. E. B. H. 31):

"DEAR NED: You had better go slow in our business affairs. If I die without a will my property goes to my brothers and sister. They, the brothers, are keen business men, and will contend every inch. You have no right to set a watch over me so that none of my friends can call on

me. Once for all, do fair by me, you will get all right. Remember also that it will be no use to come here until the Doctor will say it is best for [you] to come. R. U. PIPER." (206).

[Note: The Doctor referred to is the attending physician. It is evident that Dr. Piper had destroyed the will of December 6, 1892, by tearing it and throwing it away before he wrote this letter].

On January 9, Dr. Piper again wrote: "In reply to yours of the sixth, I repeat what I said before, that I can not be moved until I can sit up in bed at least; and that when you send me what is due from the Sharon estate, I will make a will in your favor. Dr. Thomas has just written me offering to take charge of the whole matter, so that the property goes to him or to the public. It don't matter which. I will add here truly, I would rather it would go to you than any one else. R. U. PIPER." (P. 206 and Ex. E. B. H. 32).

On January 12, 1893, the Doctor, still at Saratoga, writes, "better have all things square." (207).

Piper left Saratoga for Chicago in the charge of Dr. Thomas, January 25, 1893. (208).

[It was during his stay in Chicago at the home of Dr. Thomas that Dr. Piper executed the deed in trust to Moore, trustee, of which the complainant speaks in his bill, and which was, before the filing of the bill, released as to the Washington property, and was declared a fraud on Dr. Piper and consequently void by the Chicago court].

Witness is shown the lease or copy of lease between Dr. Piper and himself of the Corcoran street house, dated October 20, 1893, being "Defendant's Exhibit C," and is asked by his counsel whether he signed it and the circumstances under which it was executed, etc.

Answer: "I signed the paper. It was upon the importunities of a letter from Dr. Thomas, purporting to be from Dr. Piper, stating that his rents were not coming in very rapidly, and that he was somewhat under expense, having

to pay his board, and asking if I could be of any help to him in the way of an allowance. Realizing the situation of Dr. Piper, and not knowing what might be done by Thomas to rob both Dr. Piper and myself of a home, and wishing to make an allowance to Dr. Piper, to which he was entitled, I signed this lease, knowing that whatever might occur it would hold me in possession of the property at least during its existence, and that before that time the adjustment of the matters by Dr. Piper and myself would be consummated, looking to his return home and his continuing with us in accordance with our agreement. I complied with the terms of the lease after it was signed by me, and I never denied the right of Dr. Piper to have an allowance made to him, if he so desired it." So much of this answer as is consistent with the terms of the lease itself was objected to by counsel for defendant as incompetent and irrelevant (214).

At the same time this lease was sent to witness for execution, a general release of all claims "growing out of any agreements or transactions heretofore had between said Piper and myself," and stating that witness had no claim or interest, other than the leasehold interest under the lease of even date, in house 1512 Corcoran St., Washington, was forwarded with request that witness would sign and return it to Dr. Piper. This witness did no do, and he states that Dr. Piper afterwards told him that the whole matter of the lease was a scheme of Dr. Thomas (216–7). Nevertheless, witness states (page 217), "I received a letter from Dr. Piper himself, under date of April 9, 1894, in which speaking of the receipt (release) which I have already stated I refused to sign, he says:

"You seem to have forgotten that I sent you a receipt gotten up by the judge, which you were to sign and return. I don't see why you can not please me in this by doing as I have several times requested. You know I have treated you finely in my will. Perhaps I have already done more

for you than I ought. R. U. PIPER." (Exhibit E. B. H. 51).

On July 29, 1894, Piper wrote to Hay from Chicago, "As I have before told you, I have left you in my will many times the whole rent" (217).

Dr. Piper remained with the family of Dr. Thomas in Chicago until the appellant, his niece, learning from witness that he was unhappy there, etc., went to Chicago for the purpose of bringing him back to Washington, but on arriving there arranged with Dr. Piper instead to take him to his sister's (appellant's mother's) home in Newport, Maine (218), where he was at the time of the bringing of this suit, and where he died.

Witness visited him there and corresponded with him, urging him to return to his home in Washington, the Corcoran street house, in which witness still kept his rooms unoccupied, awaiting his use of them. Appellant called on appellee during this period, and at one time the latter suggested that he would like to make some use of these rooms. Dr. Piper wrote, partly in reply to this suggestion or request, December 18, 1895, "It is better for both of us not to have any misunderstanding between us. Anna informs me that you would like to use my rooms. You can do so until I otherwise advise you, if you will pack all my bric-a-brac and all the little things in the room, and put them in the closet and lock them up. R. U. PIPER" (222).

Witness accordingly has since made use of the rooms, complying with the directions contained in the letter.

When witness learned from the land records that Dr. Piper had made the deed which is in evidence, of the Corcoran street property to appellant, witness immediately wrote to the Doctor in regard to the matter, in reply to which Dr. Piper wrote under date of October 23, 1896:

"DEAR NED: Your letter of the 20th inst. just received. Now, as to my affairs, it does not seem to me that I ought to consult you in regard to giving my niece my Washington house. She has been and is like a daughter to me, and has

done all my business for nearly two years. Now, as for the agreement about my boarding with you while you was in my house, you was to pay me $200 a year, furnish board for myself and wife, etc. Now, as I have not been there for some four years, I think you would be willing to pay me a fair equivalent for our board during the time. Since I have been acquainted with you I have always had a friendly feeling for you and have tried to help you all I could. I appreciate your kindness me, but are we not on a par in that respect? Would you like to rent the house again after your lease expires? If so, you shall have the first chance. R. U. PIPER" (224).

Questioned by his counsel, witness denies that there ever was an agreement such as stated in this letter by which he was to pay Piper $200 a year. "The only payment that I agreed to make to him was in the so-called lease by which he was given a allowance" and this was after the death of his wife (224).

As to his cross-examination on this point, see R. 234–5, where he admits passing receipts of $50 each quarter while the doctor lived with him. Witness also produced on his direct examination the mutilated and torn will before referred to as annexed to the deposition of Mr. Hine, and defendant's counsel objected to its introduction (227). He also produced another paper purporting to be a will of Dr. Piper, signed by him but not witnessed, which he states was found in a drawer in the Doctor's room in the Corcoran street house after he had gone to Saratoga, together with a paper purporting to be a will of Mrs. Piper. By the terms of this instrument, in case of the death of Dr. Piper's wife before his own death, he bequeaths $2,000 to his sister, Victoria A. Whitney (appellant's mother), $500 to his brother in law, John P. Heywood, and the residue of his property to appellee (228).

Relative to this matter of wills he admitted on cross-examination that Dr. Piper made a will while in Washing-

ton, before leaving for Saratoga, of which witness knew nothing at the time, and on redirect examination (page 260) he says: "I heard of it accidentally from a gentlemen in the city of Washington, Mr. Brainard, and learned of it about the time of the institution of these proceedings, in December, 1896, or January, 1897."

This is the will referred to in the testimony of Mr. Brainard (66), who was produced as a witness on behalf of defendant.

When cross-examined in reference to the visit to Mr. Cook's office, Mr. Hay testified that when the will drawn by Mr. Cook was made, it was suggested that a deed be given by Dr. Piper instead of the will; that that *may* have been suggested by witness; that Piper stated that he would prefer to make a will; that he, Piper, did not believe in one parting with his property during his lifetime, and for a further reason that it would be better for Mrs. Hay and the children, and for Hay himself, if he, Piper, retained the property in his own name, as he could go upon a bond for Hay, or if Hay became embarrassed financially, the property would be in Piper's name, and could not be disturbed, and that he could better care for Mrs. Hay and the children if Hay was taken away; that Piper had stated to the witness in so many words, "that if Edwin should be taken away that he would take care of Mrs. Hay and the children and that if she were taken away, that he would likewise care for and rear the children, and at his death leave the property to them (243, 244).

As late as the 20th of October, 1896, Hay wrote to Piper, at that time with Miss Whitney in Newport, Maine, as follows: "I have observed also of one further step in your affairs in the recording of the deed to Miss Whitney. I will not comment upon that at this time, but our relations are such that it seems to me that you might have consulted me upon the matter prior to taking such a step. In all of our relationship I have done to you only what kindness and

affection has prompted, and have faithfully carried out my part of the sacred contract, and while I do not for a moment wish to come between you and your good sister, still there are tokens of affection between you and me which should not be slighted off" (255).

On the 11th of November, 1896, Hay again wrote to Piper: "This is the second attempt on your part to dispose of the property both here and in Chicago, so you had better advise your niece of the exact situation. . . . I will hold the house as before, trusting to keep our arrangements agreeable to you in every particular" (255–6).

On his redirect examination Hay testified in reference to the home on Corcoran street that "the Doctor suggested that, as he had invested considerable money in the building, that it would seem proper to make him some allowance on account of the large investment for the home. Not wishing to make any formal agreement concerning that, the Doctor was satisfied that we should liquidate the amount of the indebtedness between us in the way that has been suggested which pleased him very much and was no hardship to me, and therefore it was done" (261).

On the 11th of November, 1896, Hay wrote a long letter to Dr. Piper, from which the following extract is made:

"Your leaving for a visit was with the full intention of spending away a few weeks, and then returning to your home, and, as a token of your good will and faithfulness to the obligation, you did, of your own free will and accord, uninfluenced in any way and with sincere loyalty on your part, as a last act, make a last will and testament (confirmatory of several others that you made in the same direction) devising to me the property not only here but also in Chicago, which I appreciated as being an evidence of the recognition of our relationship and an overt act of your affection for me" (291).

In Mr. Hay's cross and redirect examinations he states that the cost of the Corcoran street property was about

$21,000 (248) and that Dr. Piper paid for the entire property—land and building—with the exception of the amounts paid by Hay for the mantels and chandeliers and expense caused by changing from furnace to steam heat, and that part of these payments made by Hay were reimbursed him in cash, and part by receipts and by credit on what witness calls an allowance from him to Dr. Piper of $50 per quarter, and that a part was not reimbursed at all (237). "The Doctor was punctillous in those things and insisted in having some settlement by which he could feel that he had paid for everything in the house" (237). That Mrs. Whitney, appellant's mother, was the only relative of Dr. Piper of whom he always spoke with affection, and with whom he corresponded while living with Mr. Hay (230).

In addition to complainant twenty witnesses were examined on the part of appellee. The testimony of these witnesses is referred to below in the order in which the same appears in the printed record, except as to the depositions of G. S. Hine and Miss F. E. Hine, which relate exclusively to occurrences in Saratoga as late as the year 1892, and are therefore mentioned last.

James Schouler, of Boston, testifies that he first met Mr. Hay and wife in the spring of 1888 and has known them since quite intimately; that he knew Dr. Piper since about 1873; that the Doctor is a connection by marriage, being a second cousin of his wife; that he saw Dr. Piper in Washington for about a month each year from 1888 to 1892, when witness would call at the Corcoran street house.

"I recall no special conversation material to this controversy at any time. My imperfect hearing prevents general conversations, and I remember no special conversation upon this subject" (51). He proceeds to testify to an impression formed from hearing letters of Mrs. Piper to his wife, read by the latter and from what his wife would tell him of her conversations with the Pipers. This testimony is, of course,

not admissible. He understood from Dr. and Mrs. Piper's statements that the Corcoran street house was built as a common home for themselves and the Hays, and there seemed to be perfect confidence and affection between the parties, and they seemed to be members of one household (51).

This testimony was taken on deposition, and, in answer to cross interrogatories, but without giving dates or source of information, as requested, he states that he understood that the house was built expressly for the Pipers and Hays to live together during the lives of the old people and then to go to Mr. Hay and his wife in consideration of giving Dr. and Mrs. Piper a home; that "he (Piper) gave me to understand that the arrangement was to continue during life. I knew nothing of what was to be paid or the terms of board, but understood it was not optional for either party to terminate the arrangement without the consent of the other" (Rec. 52).

Emily F. Schouler, the wife of the preceding witness, states that she visited Washington every year from 1888 to 1892, and saw Richard U. Piper, her second cousin, at his home and at her hotel very frequently.

"Dr. Piper did tell me something about these matters, and I understood that the house on Corcoran street was built for the joint use of Mr. and Mrs. Hay and Dr. and Mrs. Piper; that they were to occupy it jointly as one family during the lives of the Pipers." She also testifies to more detailed statements as to the alleged agreement made to her by Mrs. Piper, which statements are subject to the objection, made by defendant's counsel, that it is not shown that Dr. Piper was cognizant of or authorized them, as well as the general objection that they are not admissible under the Statute of Frauds, which objection applies also to all the oral statements of Dr. Piper relating to the real estate in controversy and is discussed in another part of this brief.

In answer to a cross-interrogatory, she says: "I know nothing of any dollar or cents arrangement in the matter, but I do know that Dr. and Mrs. Piper were to live with Mr. and Mrs. Hay during their natural lives, and to be taken care of as their parents, and at their death the house on Corcoran street was to go to Mr. and Mrs. Hay" (54 and 55).

Louis Kaufman testifies that he was formerly in the clothing business, and often talked with Dr. Piper between the years 1887 and 1892, when the latter would come to his place of business in Washington, accompanied by Mr. Hay, to order clothes or have some fitted. Piper told him he had adopted Mr. Hay. Would say, "He is my boy—I am living with Ned. He is my boy, and I am going to build him the house; said that Ned was to take care of him for that, and he was to leave him this house" (85).

On cross-examination: Q. "He didn't tell you what Hay was to do for him, except in that general way that Hay was to take care of him?" A. "No, sir." Q. "Didn't say whether that meant to board him or not?" A. "I don't know of that. He would talk with me in the store, and he said that he had adopted Ned as his son, and he was going to leave him this piece of property, and that he was to take care of him for it. What he was to do, I don't know. I never went into his affairs" (87).

Albert T. Coumbe is a real estate agent and testified that he has occupied the same office with Mr. Hay for the past fifteen years, and knows him very intimately; that Dr. Piper consulted him about purchasing land on which to build, and that he afterwards purchased the Corcoran street lots against his (witness') judgment; that after the Doctor started to build the Corcoran street house, witness went a number of times to see it and talked with the Doctor about it. "Of course, I felt a little interest, because I knew the house was being built for Edwin and Florence, as he called them." "He seemed to have the greatest affection for Ed-

win and Florence, and he told me a number of times that he was building that house for Edwin and Florence" (89). (On cross-examination) "It was told to me a number of times by Dr. Piper that they were going there to live as one family. The Doctor told me time and again that they were to live there as one family, and that Edwin was to have his house at his death" (91). Q. "Because of that affection which existed, he told you he was to give him that property?" A. "Many times; and, of course, that was understood by everyone." Q. "And it was because of his affection that he was going to give Edwin this property?" A. "That was what he was building it for." Witness always considered Dr. Piper "a very brilliant and smart man, a very intellectual man. All the time that I knew him he had the brightest mind. He was a scientist and took great interest in scientific matters. I considered him a bright man" (92).

George A. Darling. Piper said, "It is a large house, but I am building it for Edwin and Florence, and they are going to live here, and we are going to live with them, and it takes quite a large house to accommodate all of us. It is to belong to Edwin and Florence, and we want it large enough to start with—it was a common expression to hear him speak of the home as Florence's and Edwin's" (94).

On cross-examination the witness said that Piper did not tell him what the arrangement was between him and the Hays, except that the house was built for their joint accommodation and use, and that he, witness, knew what the arrangements between the parties were only by hearsay (97).

Julia F. Darling. Mrs. Piper, several months after the Pipers and the Hays occupied the new house, said something to the witness about her dining room in that house, "and then, as if reconsidering what she had said, remarked, 'I say my dining room. Of course this is Florence's house, but they are our children; we are all one, and this is our home'" (101).

Witness said also that Dr. Piper spoke of it being Edwin's house; "that the house was Edwin's, and that they could have the rest of the house as they liked, and that he was going to regulate his rooms as he liked" (101).

MRS. MULLETT. This witness is the widow of the architect who prepared the plans for the new house and superintended its construction. Mrs. Hay had the principal say about what was to be done here and there. The Doctor would not say anything, but would send Mr. Mullett to her. He would say, "This is being built for Edwin and Florence, and whatever they wish, have it done" (105).

"Both Mrs. Piper and the Doctor gave me to understand that they were building this house to be used by the Doctor during his lifetime, and afterwards to belong to Mr. and Mrs. Hay" (106).

On cross-examination Mrs. Mullett said that she understood from what the Doctor said to her that the house was being built so that they could all live together; that it was for Edwin and Florence; that they should have it at his death; and that made witness believe that Dr. Piper was to live there as he would with a daughter and son. That is what Dr. Piper gave her to understand (110, 111).

THOMAS A. MULLETT, son of the architect, does not testify to any knowledge or information as to the alleged agreement.

WILLIAM E. MCLEAN. Witness, in talking to Dr. Piper, made some reference to the house being such a large one, whereupon Dr. Piper said it was none too big; "that Edwin and Florence had several children, and that he and his wife were going to reside there; that the house was built for all of them" (118).

DR. G. WYTHE COOK. Testifies that he visited Dr. Piper and the Hays professionally and also socially at the Corcoran street house; heard Dr. and Mrs. Piper both say that Mr. and Mrs. Hay were their children, and "that they were

to have their property." Dr. Piper told witness that he met Hay in a case in which they were both expert witnesses; told witness how pleased he was with Mr. Hay then, and how he came to be attached to him; how he came to Washington and made the Hays a visit; and how they had agreed to live together—never went into any particulars about it, but just a statement to that effect" (123).

On cross-examination witness stated that he heard Dr. Piper refer to the Hays as his children—he heard the Doctor refer to Mr. and Mrs. Hay as his children, and speak of his property in this way so often—witness's supposition was that the proposition to give Hay the property grew out of the regard that Piper had for the Hay family (125).

W. T. KEENAN. This witness was the builder who had the contract for erecting the Corcoran Street house. Dr. Piper told witness that he was building the house as residence for himself during his lifetime; that he adopted Mr. Ed. Hay and his wife as his children, and that at his death this property would go to them; Piper said that he was doing that for his children—witness thought at first it was Mr. Hay's children, until Piper told him it was Mr. Hay and his wife (128, 129).

On cross-examination witness said that he inferred from his various conversations with Dr. Piper that it was because of his affection that he had adopted the Hays as his children, and that he was building this house as a joint home for them and proposed to leave it to them as a gift. Being asked whether it was a pure act of friendship on Dr. Piper's part growing out of his affection and love for the Hays, witness said, "Well, he did not go into details, but I remember he said that he adopted them as his children and at his death the property would go to them" (130).

On redirect examination, being asked if Dr. Piper did not say at the same time that Hay and his wife were going to take care of Dr. Piper and his wife during their lives,

the witness answered, "I don't know whether I used that word 'would take care of,' but they were going to live with them" (131).

PETER S. KEMON. Dr. Piper told witness, as near as witness could call to mind, that Hay and his wife were practically adopted by them, and the home was one that was erected for the benefit of Mr. and Mrs. Hay, and that they were to live with Mr. and Mrs. Hay during their lifetime, and that the property was to be Mr. and Mrs. Hay's. Witness did not know but that the house was being built by Mr. Hay until Dr. Piper informed him (134).

RICHARD K. EVANS. Is a brother-in-law of Mr. Hay. Piper told him that he had substantially agreed to adopt Mr. and Mrs. Hay, and that Mr. Hay and his wife had agreed to look out for them during his entire life, and when he got through with what he had in the world he would convey it, by will or otherwise, to Mr. Hay and his wife. Piper said to witness, "I am going to live here always with Ned and Florence, and they are to take care of me all my life, and make it comfortable for me," and he finished by saying, "and I am going to take care of them in consideration for that" (139).

Piper on many of these occasions, said to witness, "Now, I have arranged with Ned, or Edwin, that he is to provide for me for my life, and in consideration for that I am going to return it by giving all I have to him" (139).

The witness stated also that Piper told him, "Since this house is going to belong to Ned and Florence, I have arranged it so that they can entertain—don't you think that will suit Mr. Hay and his wife, or Edwin and Florence, as he called them; what else could I do for him for taking care of me all my days; could I do anything nicer than that?" Witness added that Piper said that Hay and his wife were to look out for him all the rest of his days, and that he was going to leave them all he had when he was through with it (141).

Being asked on cross-examination what Mr. Hay was to do for Dr. Piper, the witness said: "Ned is to take care of me. He has agreed to do that all my life, and I have agreed to leave Ned all I have, and I am going to adopt them" (143). This witness went to Europe shortly before the Corcoran street house was finished, remained abroad ten years, and his testimony is consequently confined to the period during which the Pipers were with the Hays at the old house" (140–1).

HANNAH FRANEY is a servant in Mr. Hay's family. While living in the old house Dr. Piper said to witness that this house which he was going to build would be his too—for his "son Edwin and Florence"—Piper said to witness that he wanted a larger house to make Edwin a present of it—at his death it would come to Edwin and his children (Rec. 148).

MAGGIE CLARK, one of complainant's servants, testified, but said nothing bearing on the terms of the alleged agreement.

ALBERT S. BROWN. Dr. Piper told witness that they were going to construct this new house on Corcoran street for Edwin and Florence; that they had adopted him; that he and Mrs. Piper expected to spend the balance of their days with them; that the new house was to be built according to Edwin's and Florence's ideas; that it was to be built for them and for their home; that Dr. Piper gave witness to understand that he had no immediate relatives and no one who cared anything about him or Mrs. Piper, and that he and Mrs. Piper expected to live with them for the balance of their lives, and that in consideration of their care and kind treatment and the home that they would have with them, this property was to be theirs at his death (166).

Witness further testified on his direct examination that Dr. Piper told him that he expected to spend the balance of his days there and that the survivor of them—that is, of himself and his wife—at their death would have it; that

the property would then go to Edwin and Florence—as he termed them, his children; that in consideration of this care and affection that they were then bestowing upon him, and that he expected them to continue to bestow upon him, they were to have this house (Rec. 166).

Being asked on cross-examination to specify the details of the supposed agreement between Dr. Piper and Mr. Hay, the witness said that clothing for himself and wife would hardly have been included in the matter of home; that Dr. Piper was to live with Mr. Hay just as his father and mother would live with their son; that if Mr. Hay's father's and mother's needs were such as would necessitate it, he would have furnished them with clothing; but that, as Dr. Piper's needs were not such as would have necessitated such a thing, witness did not suppose clothing was to be included; but that if it had been necessary, Mr. Hay would certainly have done so (Rec. 169).

The witness further expressed his opinion that if Piper had lost his property, Hay would have been bound to continue to furnish him with a home, and added that Dr. Piper frequently said to witness that the house was built for Edwin and Florence in consideration for this care and attention and the home he was to have with them for the balance of his days. Being asked who was to furnish the house, witness said he did not known anything about that part of it. Being further asked whether Dr. Piper said to him that in consideration of this that he was going to do as he expressed to witness, leave Hay this property, witness answered "Yes, in consideration of this care and comfort and this home." He seemed to lay particular stress upon the "affection and comfort," and stated that they were something that money could not buy (Rec., 170).

William A. Cook, a practicing lawyer, testifies that—

Dr. Piper came to witness' office with Mr. Hay. Told witness he desired to have a will prepared, stated the property he wished to embrace in the will and gave directions

accordingly. He stated that he wished the will prepared so that it would vest the title absolutely in Mr. Hay; that Mr. Hay, as well as Mrs. Hay, had been peculiarly kind and good to him, and "that he felt that it was only his duty to make a proper return to Mr. Hay, and that he desired to vest the title to the property in Mr. Hay; . . . that the house belonging to Mr. Hay was not a sufficient house, and he ought to have a better and larger house, and he proposed to buy a lot . . . and have a house erected on it suitable for Mr. Hay for his own accommodation, and one that would exist absolutely in Mr. Hay when completed" (173)

Witness testified that he then had Mr. Hay retire and Dr Piper repeated the directions, and witness proceeded to draw the will. The will was drawn in accordance with these instructions, and executed by Dr. Piper (173, 174).

Subsequently Dr. Piper told witness that he was exceedingly pleased with the disposition he had made of the house in giving it to Mr. Hay; that he had no regret in doing so that his comforts and enjoyments had been greater after the giving of the house; and that if he had it to repeat he would make the same will and the same disposition of the property (174).

Witness said that subsequently Dr. Piper told him that he was greatly pleased that his pecuniary means enabled him to do for Mr. Hay what he had done; that he deserved everything and more than he could give him (175).

Anna D. Kearfoot. Boards with the Hays, and was a member of the household during all the time the Pipers were with him.

Prior to the time when Dr. Piper and his wife came to Washington to live, witness saw letters from them to Hay in which it was stated that the Dr. and Mrs. Piper were very anxious to come to Washington to live and make their home with Mr. and Mrs. Hay, assuming the relationship of father and mother and children to one another—that was the substance of the letters, just expressing the desire

always to come and make his home with them, he and his wife to take the place of father and mother towards Mr. Hay and his wife (264).

This witness further testified on her direct examination that while the Pipers and the Hays were living together in the P street house, and about the time the new house was building, Mr. and Mrs. Hay and Dr. and Mrs. Piper and the witness being together, "Dr. Piper said, that in consideration of Edwin, his son, and Florence taking care of them the rest of their lives, and they being one common family in the house which he was about to build, that he intended and was going to make a will to the effect that this house, as well as the Chicago property, and other property of which he might be possessed at the time of his death—to Mr. Hay or Edwin; or in case of the death of Mr. Hay before their death, the same was to apply with regard to Mrs. Hay, and the property would all go to her; or in case of the death of both Mr. and Mrs. Hay before their own death, that he would take it upon himself to care for the children and bring them up, and if possible, to place Edwin's son—that is Ned, Jr.—in whom he took great interest—that he would place him in life, and that then the property would go to the children of Mr. and Mrs. Hay" (266).

This witness further testified that either at the same time or on another occasion, Mr. Hay remarked, "that if Dr. Piper should lose every cent in the world, that he would consider himself bound to make them happy and take care of them as long as they lived" (266).

Being asked whether any formality was gone through with on the occasion of this contract being talked of, the witness replied, "There was no writing, but they shook hands" (267).

She also testified that in the P street house Dr. Piper told her that he was going to make a will, and then after that he spoke of the fact that Mr. Cook had made a will and he had signed it, and that now everything was all right and

just as he intended it (meaning to Mr. and Mrs. Hay as heirs), and that he wished it to go in that direction and now he was perfectly satisfied. Witness further stated that Piper said in that connection that he had made a former will in which he had left everything to Mr. and Mrs. Hay, but that as he was now building this house on Corcoran street, he would rather make another will so as to more particularly mention it in this house, as the money he had in bank had been drawn out for that purpose, and that he wished a will which would include everything he owned (268).

Being asked on cross-examination what it was that Mr. Hay was to do for Dr. Piper, witness said that Mr. Hay was not to furnish the Doctor his clothing, nor to provide his medicine in case he was sick, nor to pay his doctor's bills, and that Dr. Piper was not to pay for his board; that what Mr. Hay was to do was to make it comfortable in the home —to do everything for his comfort in the way of a home and making him happy, and doing for him as for a father. If Dr. Piper was sick, of course he was to see to nursing him, taking care of him, and if necessary to furnish medicine, but nothing particular was said about this, but that Hay was to do everything for his comfort—that Mr. and Mrs. Hay were to do for Dr. and Mrs. Piper as a son and daughter for a mother and father," and witness added, "that would cover everything, it seems to me" (271, 272).

George S. Hines, proprietor of the hotel at Saratoga where Dr. and Mrs. Piper were stopping at the time of the latter's death, was examined as a witness on behalf of complainant on written interrogatories and cross-interrogatories. He deposes that he first met Dr. Piper at his hotel in Saratoga in October, 1891, at which time he spoke of Mr. Hay "as being with him, living with him, and as being his adopted son;" that he again came to witness' hotel in August, 1892, where he remained until the winter of 1893, his wife dying there. That during his second visit he spoke of Mr. Hay as "Son Edwin" and as his adopted son. That

Dr. Piper executed a will in his presence during this last visit, which was afterwards torn up. "It was taken from a slop jar where it had been thrown, given to me, and I gave it to Mr. Hay when he came to Saratoga about January 1893" (p. 80). This will was executed in the presence of Mr. Hay, witness, the nurse, the sister of witness and Mrs. Piper, and witnessed by three persons, and is in the Record at page 82. The deposition of Frances E. Hine, sister of the last witness (pp. 81 and 82), is much to the same effect. She, however, also mentions another and later will, made at Saratoga after Mrs. Piper's death, which she witnessed, but as to the contents of which she knows nothing.

Defendant's (Appellant's) Testimony.

The answers of the appellant and Richard U. Piper are under oath, and are, of course, to be read as evidence so far as they are responsive to the bill. They deny all of the material allegations upon which complainant bases his prayers for relief.

Richard U. Piper was examined as a witness on behalf of defendants. Being in Newport, Me., his testimony was necessarily taken by commission on written interrogatories. The appellee, however, acting as his own counsel, went on to Newport, and had the advantage of conducting the cross-examination orally.

In response to Interrogatory 4, touching his residence with Mr. Hay and the contract alleged to have been made between them Dr. Piper says:

"Just as I said (i. e., in preceding answer), I came there (to Mr. Hay's house) first on a visit and afterwards boarded with them. There was no agreement of the kind, sir; came there in the first place voluntarily; no, sir, can give no names of places or residences, because there was no contract, either written or oral" (28).

He further states (Ans. 6), "I said there was no contract

but first I boarded with him (Hay). I don't know but I have got to modify that—I mean I lived with him and boarded with him with a verbal agreement to pay my board, and he was to pay me for occupying my house; he should occupy my house. I built a house, and he was to occupy it and pay me in board; pay me good and sufficient board; no, sir, he did not. Well, his agreement was that I have sufficient fire and heat in my room, which I didn't. I had to buy coal and a stove to keep myself warm, one thing. Another thing, the food wasn't what it should have been; quite the reverse" (28).

He denies that he came to Washington in pursuance of any agreement or covenant to live with the Hays—states that there was no such agreement, and no such covenant (28).

Int. 8. As to whether he resided with the complainant in the city of Washington, and who owned the house, and whether he paid the complainant any money for board or maintenance furnished by him during his stay with him and whether if any such payments were made, they were made in pursuance of an agreement with complainant and whether or not witness is indebted to complainant, he replied:

"First I suppose he owned the house himself. I was on a visit with him. Afterwards as I said I built a house and owned it myself. I paid him some money; paid him in the occupation of my house. No, not indebted to him because it was paid as I said before" (28).

Interrogated as to will of January 14, 1886, he says (Answer 11, p. 29): "I never made any such will; not in my memory. As I said before, I made a number of wills. I could not pick out one and identify them at this distance, but I am very sure that I did not make this one, as sure as I can be under the circumstances." He had previously said: "I made quite a number of wills and of course I can't identify them, pick out one from another, but they have all been superseded by another will made about two years hence" (29).

In answer to interrogatory 12, as to whether he and his late wife had adopted complainant as their son, and whether they addressed him as such, "Simply nonsense," no such thing. We never adopted him; never thought of adopting him. It was not my custom to address him as such; very rarely, if ever, said "my son Edwin." She sometimes not unfrequently addressed him so, but mere term of kindness. She believed him. There was no formal agreement, nor was it my custom to address him so. My wife sometimes called him son Edwin; that was when she believed in his honesty and truthfulness; she wouldn't now, if she was alive (29).

In answer to interrogatory 15, as to whether the house was built for complainant, and whether complainant had anything to do with its construction, he replies: "It was not, sir. It was built by me, and not built for complainant. . . . I furnished all the money and all the means, employed an architect and paid him $500 for doing it." He further states that he paid for the lots out of a deposit in the Central National Bank (29).

In answer to interrogatory 18 as to whether complainant contributed anything towards the cost of the house, etc., he replied: Contributed nothing towards the cost of the house; appendages to the house, the furnace and the mantel-pieces —he loaned me some money, some $600 or $800, but that has been all repaid and I have the receipts. Receipts annexed marked Defendant's Exhibits A and B (30). (For said Exhibits see page 41.) States that since he has left the house complainant has occupied it; that he occupies it under a lease from witness, a copy of which he annexes as Defendant's Exhibit "C" (30).

[Note.—This lease, which appears on page 42 of the Record, is a lease of 1512 Corcoran street from Piper to Hay for three years from January 1, 1894, to January 1, 1897, reserving the said Piper four rooms and bears date October

20, 1893.] Inter. 26: "What as to the character of complainant's treatment of yourself and wife during your residence with him in the city of Washington?"

Answer. "It was kind enough so far as his personal conduct with us. Like Byron's Pirate he was the mildest mannered man that ever cut a throat or sunk a ship." "He was all the time trying to cheat me, talking about his love and affection for me, while he was planning to cheat me out of my property" (30).

Int. 27. "What was the conduct of complainant's wife and children towards you and your wife while you resided with complainant?"

Answer. "Very uncomfortable and disagreeable; so much so that I called her a quarrelsome woman. I couldn't propose anything that she wouldn't fight over it, and frequently the ladies didn't speak together. We got so after a while it was almost impossible for us to stay there, and I made up my mind before I went away of the necessity of a change. I couldn't propose anything to the woman that she wouldn't fight me on it" (p. 30).

He further states (p. 31) that the following incident took place in Saratoga: "At that time I was very much out of health, so much so that I could scarcely sit up, and this man (meaning the appellee) was around me trying to induce me to make a will and give him my property and I may possibly have signed a will of that kind. He took me in his arms one time and clasped me to his breast. He came into the room where I was—vacant room—I was standing there—took me in his arms around me and clasped me to his breast. 'You must act with me Doctor, you must act with me. . . . I began to suspect him then very strongly—a manifestation I was not accustomed to . . . he has with me and around me, he and the other robber, Mr. G. S. Thomas" (31).

In answer to Int. 43, he states that complainant has no

claim whatsoever, "only these fictitious ones which he brings about here, a will being made for him, etc., except the lease heretofore mentioned."

Int. 48. State whether or not complainant visited you at Newport; if you say he did, state whether it was at your request or of plaintiff's own volition, and what the object of such visit was?

Ans. "He did, he came of his own proper instance. He came, as I think, to get me out of my property, for he asked me to sign a paper conveying it to him directly,—so many words urging me to do so, and said he would take good care of it and take good care of me, and that I should have a very comfortable living there."

Asked how he came to convey the property involved in this suit to his niece, the appellant states that he did so "of his own proper notion and desire, mainly to make some acknowledgment of the care she has taken of me. She has been more than a daughter to me; I never walk out scarcely without leaning on her arm, and she has taken all the care of me these two years. Hers was care and not talk about care" (32).

He further says in answer to Int. 56 I have no desire to go to Washington because the surroundings there are so disagreeable. I am not under the least obligation to live with the complainant, while he is under a good deal of obligation to me in occupying my house without paying me anything more than a bagatelle of rent for five or six years.

On cross-examination by Mr. Hay: Did you propose to the complainant that you would buy a lot and build a house in which to accommodate two families if he would permit you to come and live with him? A. I never made any such proposition. I built a house and let it to him (34). Asked a circumstantial question as to whether in the presence of his wife, the complainant and Mrs. Kearfoot he did not make the solemn covenant and contract set forth in the bill, he replies—"No; emphatically no. The whole

thing is a fiction. I never did any such thing as that. It is well manufactured, and that is all it is. I never made any such agreement, never thought of any such agreement. I must have been asleep" (35).

"Did this complainant ever suggest to you that you should convey the property by deed to him? Yes, sir, he did. When he came to Newport he said so, that I should deed, and argued with me in regard to it, how the thing could be done. He said in connection with that the laws in the District were pretty strict and the thing would have to be done in a peculiar way, which he knew how to do. Now that is all true; there is no fiction about it. That is what he said. I am no lawyer." (36).

REDFORD W. WALKER, a real estate agent, testifies that the fair rental value of 1512 Corcoran street between 1888 and 1892 was between $85 and $90 per month, and since 1892 about $75 per month. AARON S. CAYWOOD, another real estate agent, fixes $100 per month as the fair rental value in 1892 and prior thereto, and $70 to $75 at the time of testifying (Rec. 65 and 66).

ANNA V. WHITNEY, the appellant, testifies (Rec. 55–62) that Dr. Piper is her mother's brother; that Mrs. Piper regularly corresponded with her mother, and the Doctor always "put something in the letters." They always seemed to be very fond of each other; knew of no strained relations between her mother and Dr. Piper—if there had been any she would have known it—"they always seemed very friendly"; that she has resided in Newport, Maine, for the past twelve years; that she first visited her uncle, said R. U. Piper, in Washington, in 1888 or 1889, shortly after he had moved to the Corcoran street house. "He said he had rented it to this lawyer, Mr. Hay, and that he had reserved apartments for himself, and the remainder of the house he rented to Mr. Hay; that she afterwards visited him several times at the Corcoran street house; that she learned of the fact

that Dr. Piper was ill and gone with his wife to Saratoga, through letters written from Saratoga by Mrs. Piper to witness' mother. That Mrs. Piper expressed the wish that Mrs. Whitney lived nearer, etc., and Mrs. Whitney later received letters written by the nurse after Mrs. Piper was sick in bed, and she then wrote two letters and witness wrote one, saying that witness would come on and care for Mrs. Piper, "and uncle said he never received them;" thinks the nurse, who was getting $25 per week, and did not want to lose her place, "failed to give the letters to uncle." First learned of her uncle having been taken from Saratoga to Chicago through Mrs. Schouler, who had gone to Chicago, and that he was unhappy there. Witness then went to Washington on two occasions, and called on appellee, who informed her "that he expected my uncle home every day—any day—he may come home tonight or tomorrow." It was not until the third visit that Mr. Hay, after witness had told him what she had herself learned of her uncle's unpleasant situation, revealed to her that he knew of the disagreeable surroundings of Dr. Piper, and confirmed her own information. Her visits were made at intervals of five or six weeks. Witness then said she would go to Chicago and invite him to come home with me (meaning to her home in Maine. See cross-examination, p. 61). "I went to Chicago, and mamma had given me a letter of invitation to him to come and spend the summer with her, and I asked him to go home with me and he was very much delighted, and he said, if I go to Maine with you I want to stay always. I want to remain at your house until I die. I said, after you stay during the summer, you may want to go to Washington. He insisted that he would want to stay always." He did not wish to stop over in Washington en route to Newport, although witness suggested that he could readily do so for a few days, but desired to take the most direct route, and they therefore went to Newport via the Grand Trunk route,

and arrived there in the summer of 1895, where he has been residing ever since (and where he has since died).

"Q. It is charged in the bill of complaint, that the deed conveying the property in Washington to you was procured by you through undue influence upon your uncle. State fully how he came to make that deed, and what he said, if anything, in connection with its execution." A. "That is entirely wrong. On the contrary, when uncle first spoke of making the deed—it was directly after it was released from the deed of trust given to Moore—he spoke of giving me a deed of the property here. I said, 'Don't be in a hurry. Wait until the Chicago matter is entirely settled, and then you can convey the property to me or make a will, or fix it as you like, if you wish.' He spoke to me three or four times about it before I would allow him to do it. He did make a deed to me and I gave him a life lease in case anything should happen to him. I opposed it three or four times before I allowed him to do it. He was so anxious to do it. He said something might happen to him; that I had all this time looked out for him, and he proposed making a deed of this property to me" (58).

"Q. How did the life lease happen to be given—at whose suggestion? A. I suggested it to him. I said to a friend of ours, ex-Governor Davis, I am afraid people will think I am after his property. He said, if you feel that way you can just give him a life lease, and that was the way it was suggested to him" (Mr. Davis is an attorney at law) (p. 58).

On cross-examination: "He (Dr. Piper) did not say anything about the relationship that existed between him and the complainant otherwise than as landlord and tenant."

"Q. Has not the Doctor always spoken to you of the complainant in the most affectionate terms? A. No, not always."

"Q. Did he not do so during the first part of his visit to your home. A. No; during the first part he said—when he

was writing about the case—when he was talking about the Thomas matter—he said you possibly knew considerable about the circumstances, as it took a rogue to catch a rogue; that perhaps it was best to have you do something about it, and when you came on your visit we would talk about it. We did talk it over with you, and finally we engaged Mr. Davis for the Chicago matter" (61).

By Mr. Hay: Did the Doctor specify any particular instance in which I did not always treat him with the utmost consideration? A. "He said several times, you don't know Mr. Hay, you don't understand him as I do. I said, why, and he said, no matter. At one time he spoke of the Sharon case. He said that you were trying to keep it until after he was gone, so as to have the money yourself" (62).

SARAH A. WAYNE, testifies that she knew the Pipers when they lived with the Hays at the Corcoran street house and probably at the P street house also; that she visited them and they visited her. They spoke kindly of Mr. Hay, but complained that Mrs. Hay made it unpleasant for both of them. Dr. Piper also complained of being annoyed by the children. One of these conversations took place two or three years before they left for Saratoga, another two evenings before they left. On the latter occasion, Mrs. Piper seemed very unhappy, and said she hoped that while they were away they could make different arrangements, etc. (62).

MARK D. BRAINARD, testifies that he knows all the parties to the suit except Moore; that he is a lawyer by occupation; that he knew Dr. Piper quite intimately—ever since he came to live with Mr. Hay in the P street house, and during all the time he lived in Washington they exchanged calls. That Dr. Piper consulted him about making a will shortly before he left for Saratoga, and witness drew a will under his directions, which was duly executed and was taken away by Dr. Piper. Witness produces and files over objection of complainant's counsel, the minutes or rough draft of this will.

The witness: "I desire to state with reference to this paper, Dr. Piper had several consultations with me at my house with regard to the forms of wills, etc., and he finally brought over this paper and asked me if it was correct. I told him it was not, and he then asked me to make the corrections and to have a correct copy made of it in accordance with the bequests he had made. I made the lead pencil interlineations myself, and the part that is in ink was written by Dr. Piper" (67).

This draft of the will appears at pages 74 and 75 of the record. According to this will, all the testator's property, real and personal (the Corcoran street house being specifically mentioned), goes to the testator's wife absolutely, except a bequest of $1,000 to his sister, Mrs. Whitney. The only reference to complainant made therein is the following: "6. I desire that my wife, Elizabeth F. Piper, shall at her death, if she so choose, give to Edwin B. Hay the sum of ten thousand dollars."

Following is from direct examination of same witness (pages 67 and 69).

Q. Did he at any time speak to you in respect to Mrs. Hay and the treatment accorded to them by her? A. Yes, sir.

Q. Please state what was said in that connection. A. It is impossible for me to give the exact language; it has been a long while ago. I can only give the substance of the conversations or the impressions made upon me at the time. Dr. Piper was not particularly friendly towards Mrs. Hay; he was incensed towards her on account of her religious belief. I reasoned with Dr. Piper and tried to persuade him out of it, but I could not. Then there had been some little matters in the house, which, perhaps, might be trivial in themselves, but Dr. Piper had magnified them into matters of considerable importance. I think Mrs. Hay had said things to Dr. Piper at several times that he had taken umbrage at.

Q. How long were these conversations prior to the departure of Dr. Piper for Saratoga? A. I think it was very shortly after the day he had written that will. I think, perhaps, the day it was written or the day after—about the 24th or 25th of June, 1892. He came over to see me several times—four or five nights in succession—and we talked over this matter, and I endeavored to dissuade him from the course he was taking in this matter. I did not know that he had any real cause of grievance. I thought Mr. Hay was very kind to him. We discussed the matter there in various ways, and all these little details would come in, and sometimes he would discuss morals and talk about religion, both ancient and modern. Dr. Piper was a very intelligent man.

Q. Was there not a change in his kindly expressions of feelings toward the Hay family during the latter part of your acquaintance with him? A. Never, in so far as Mr. Hay was concerned; towards Mrs. Hay he entertained a very strong feeling.

Q. And it arose from two causes? A. Yes, sir; so far as I could ascertain.

Q. Do you recollect at the time of preparing this will of which you speak there being any other will at that time? A. Dr. Piper had a will. Whether it was original or not, I am unable to say. It had the appearance of being original. In this will the son of Mr. Hay was named as beneficiary. When this will was executed Dr. Piper destroyed that other will.

Q. How? A. He burned it.

Q. Do you recollect the provisions for this son in the original will? A. No, sir. I know it was quite favorable for the son. I only read it that one time.

Q. Were any other members of the Hay family remembered in the will except the son Edwin? A. I do not recollect. I suppose a copy of that document is in existence.

Q. Do you know whether Mrs. Piper shared the feelings

of her husband with respect to Mr. Hay? A. Very much more than Mr. Piper. I know I heard her say that she had concealed from the Doctor the fact that Mrs. Hay had joined the Catholic Church, knowing his prejudices.

Q. Did she speak of any other irritating things other than the change in relation to Mrs. Hay's religion? A. Yes, sir. Mrs. Piper was dissatisfied with Mrs. Hay. It was one of those things I felt a reluctance to mix up in. I wanted to act as peacemaker. I thought the Pipers were nice people. They were all friends of mine and I wanted to smooth matters over.

On cross-examination Mr. Brainard was asked whether Dr. Piper did not state, further, how he was living with the complainant? Ans. "I do not think he ever told me the details of the matter. I think on one occasion he stated that he had made arrangements with Mr. Hay or had made a contract with him whereby he was to have a suite of rooms in the house reserved for his benefit, and that Mr. Hay was to pay him, if my recollection serves me right, two hundred dollars a year and board for himself and wife. I have never seen the original agreement, if there was such an agreement, and only state now what I heard the agreement was from Dr. Piper." That this statement was made by Dr. Piper sometime after moving into the Corcoran street house (70–71).

Horace L. Piper, produced as a witness for defendants, testified (see Rec. 71 to 74) that he has lived in Washington over 30 years, knows all the parties to the suit except Moore, and has been well acquainted with Mr. Hay for 25 years; that Dr. Piper is a remote cousin of the father of witness.

Asked when his acquaintance with Dr. Piper commenced: A. "The first I ever heard of him was one day my wife picked up a newspaper and saw the notice of a permit to build a house issued in the name of Dr. Piper."

Q. Did Dr. Piper at any time have any conversations

with you in respect to Mr. Hay or his wife in relation to his residence with them?

A. Yes, sir. He said that he was surprised that Mr. Hay did not mention the fact that he was living with them. He said he had built the house, and that he and his wife were living with Mr. Hay; that it was a business transaction, and that was about all that was said at the time. He invited me to come and see him. I, of course, went up there very reluctantly because of the fact that Mr. Hay, as I thought, did not want the Doctor and his family and myself to come together, and on that account I thought I might not be very welcome.

Q. What gave you that impression? A. This thing had gone on for two or three years, and Mr. Hay and I had met frequently, and he never mentioned the fact that he had living with them a family by the name of Piper. I know if I had of had a family living with me by the name of Hay I certainly would have mentioned it to Mr. Hay.

Q. Was there anything in the conduct of Mr. or Mrs. Hay that gave you that impression? A. I had met Mr. and Mrs. Hay at the Shakespeare Club and at other places, and no mention was ever made to me that they had a family living with them by the name of Piper, and we thought it very strange. We called on Dr. and Mrs. Piper one evening, and Mrs. Piper said, I want to bring Florence (Mrs. Hay) in, and she went and called her, but Mrs. Hay did not come. That occurred a couple of times, and so I thought they did not like our going there, and my wife got the same impression, and that is why I refrained from going. I felt that I had better stay away, and so I did. That was the status of things until about 1892. They came to our house twice to our going to their house once. Dr. Piper is a very intelligent man and a good talker, and Mrs. Piper was a lovely woman. They would talk over their relations with the Hay family—I do not mix up with other people's affairs.

The general tenor of their remarks seemed to indicate that things were not pleasant.

Q. From what statement made by Dr. Piper or Mrs. Piper did you gather that? A. Well, I do not like to state things out here. The Doctor begun to speak rather slightingly of some of our friend's performances.

Q. Who do you mean by that? A. Mr. Hay. I made no special response to that, but laughed. Then there was considerable conversation of an unpleasant kind as to the other side of the house.

Q. As to who, Mrs. Hay? A. Yes, sir.

Q. What was that? A. Well, one of the things was in relation to food. The Doctor could not get steak that he could eat. The madam was not disposed to be obliging, but Mr. Hay tried to make things better.

Q. Was anything said by Dr. Piper as to the treatment they received from Mrs. Hay other than what you have mentioned? A. I can not recollect any special conversation. They both seemed to be out of sorts with her.

Q. Anything that Dr. Piper said in connection with his relations with them you may state. A. Nothing except what I have stated. He spoke rather lightly and sneeringly of Mr. Hay's public life; nothing very definite. On the last visit they told us that they were going away and the Doctor proposed to sell me his house. We were talking about building about that time and something was said about our house. I said, What I want is a double house; I want a house like yours. He said, Buy mine. I said, You don't want to sell; and he said, Yes; I will sell. I said, It was beyond my pile. That was the last time we saw them before we went to Saratoga. The first thing I knew, in picking up a paper, we found that Mrs. Piper was dead and was to be buried here. Our relations were such then with the Pipers that it seemed to me that Dr. Piper should have given me notice of his wife's death; but he did not. I was

not certain whether I would go to the funeral or not. I wrote a note to him, but did not get any answer, and I did not feel any better about it. My wife said, You ought to go up there. I did not want to go; but, against my will, I went, thinking possibly that Dr. Piper was sick. I thought it strange that Mr. Hay did not notify me. I found out that Dr. Piper was not here.

Cross-examination.

By Mr. HAY:

Q. When did you first meet Dr. and Mrs. Piper? A. That was the time I have stated; it was in 1889.

Q. Where was the Doctor and Mrs. Piper living when you first met them? A. At your house.

Q. Did the Doctor in any of his interviews with you speak of the relationship existing between the complainant and himself? A. He said it was simply a business transaction. They expressed surprise that you never mentioned it to us.

Q. You did not know them when they were living at 1535 P street? A. No, sir.

Q. Did they have any conversation with you about the complainant and his treatment of them? A. Only what I have mentioned. We did not encourage it. We generally felt kindly to you, Mr. Hay, and my wife has spoken a whole book full of compliments about you.

Q. Did they mention any instance of the treatment by Mrs. Hay to them? A. About the food was the special instance. They mentioned other instances or, rather, unkind treatments. I do not recollect about them now. They gave me the impression that they were very much displeased with their treatment. I do not think they attributed it so much to you as to the madam.

Q. Then the feeling towards the complainant had not changed? A. Yes, sir; it had changed.

Q. He never spoke about any change in his affection for

the complainant? A. He never intimated to me that he had any affection for anybody in that house except his wife. He said that his living with you was simply a business transaction. He never expressed any affection towards you or any member of your family.

Q. How often did you have interviews with them? A. I felt that I was not welcome in that house, although I had as much right there as any visitor. I stayed away from him many times because I thought your people did not want us. I suppose I have not been there over a half a dozen times in my life.

Q. Was not this a matter of your own imagination? A. No, sir; I do not think I am an imaginative person, I sometimes wished I was (71, 72, 73).

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No. 112.

Brf. of Wilson, Hoehling & Hay for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Nov. 15, 1900.

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ANNA V. WHITNEY, APPELLANT,

vs.

EDWIN B. HAY, APPELLEE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF APPELLEE.

JEREMIAH M. WILSON,
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E. B. HAY,
Attorneys for Appellee.

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EDWIN B. HAY, APPELLEE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

PLEADINGS.

This is an appeal from a decree sustaining the original and supplemental bills of complaint filed by complainant, Edwin B. Hay, to secure the *specific performance* of a certain contract and agreement whereby one of the defendants, Richard U. Piper, in consideration of the promise of complainant to receive him and his wife into his home for the remainder of their lives, to furnish them board, and treat them with affectionate care, as if parents, had agreed to make title by will to complainant of lots Nos. 139, 140, and 141, square 193, and the improvements thereon, in the city of Washington.

The defendants named in the original bill are Anna V. Whitney, of Newport, Maine, appellant herein; the said Richard U. Piper, now deceased, and George Moore, trustee.

The original bill of complaint, setting forth in detail the contract and agreement aforesaid, was filed December 31, 1896, and alleged that the defendant Piper, in violation of his said contract, had made conveyance of the property above described to the defendant Moore as trustee, and, in further violation of said contract, had made conveyance thereof *in fee* to the defendant Whitney. The bill prayed that the conveyance in trust to the defendant Moore be set aside, and, further, that the defendant Whitney be decreed to be a trustee of the legal title of said property in trust for complainant, in accordance with the agreement aforesaid (*R., 1–6*).

Answers were filed by the defendants Whitney and Piper January 30, 1897, in substance denying the averments of the bill (*R., 7–14, 15–21*).

The defendant Moore filed answer, setting forth in substance that he no longer had any interest in the property, having released and reconveyed all his interest therein to the said Piper on July 14, 1896 (*R., 14, 15, 21, 22*).

Replication was filed by complainant February 9, 1897 (*R., 23*).

Supplemental bill was filed by complainant April 12, 1897, alleging that the defendant Whitney, notwithstanding the pendency of said equity cause, had instituted a landlord and tenant proceeding for possession of the property; and an injunction to restrain the prosecution of said summary action was accordingly prayed and granted (*R., 300*).

A further supplemental bill was filed November 2, 1897, setting forth the death of the defendant Piper on August 4, 1897, and averring that, by reason of all the premises, complainant had then become entitled to an immediate conveyance in fee from the defendant Whitney. It was stipulated by counsel that the defendants should be deemed to have answered said supplemental bill, admitting the fact of the death of defendant Piper, but denying the equity of the case, and that thereupon the cause should proceed to trial

on the pleadings, stipulation aforesaid, and testimony (*R.*, *300*, *301*.)

Decree was entered in favor of complainant Hay, March 9, 1898, directing conveyance forthwith by the defendant Whitney, as prayed, and further making the injunction, as to prosecution of landlord and tenant proceeding, perpetual (*R.*, *299*).

Defendant Whitney appealed in open court to the Court of Appeals of the District of Columbia (*R.*, *300*), which latter court *affirmed* the decree of the court below (*R.*, *327*; *Opinion*, *311–327*).

Thereupon defendant Whitney prayed an appeal to this court, and the same was allowed June 28, 1899 (*R.*, *328*).

FACTS.

The facts in the case are so conclusively and overwhelmingly established by the evidence that it is not believed there can be any serious controversy in respect thereof. It is proper, however, in this connection to call the attention of the court to the fact that the defendant Piper was examined as a witness in his own behalf, and denied substantially everything, without exception, even in the face of his own innumerable writings, which utterly disprove his testimony. It is but fair, however, to pass by his deposition without further comment, since it is evident that at the time he testified he was no longer in a condition of mind to intelligently or rationally comprehend the occurrences about which he was interrogated (*R.*, *23–41*).

The defendant, Richard U. Piper, was educated as a physician, had qualified himself as an expert in handwriting, was the author of a medical work, was a scientist, and first met Hay in Yankton, Dakota, in 1882, where both were testifying as experts in handwriting in a Government case. At that time Piper was about seventy years of age. He and his wife then were and for some time had been boarding in

Chicago. They had no children. He stated that he had brothers and a sister, but that the relationship between them was very much strained; that they did not care for him, nor did he care for them. Piper and Hay became quite intimate, and when the case was concluded, Hay, en route home, stopped off at Chicago, at the solicitation of Piper, to meet his wife, Mrs. Piper (*R., 176–178*).

The next meeting between the parties occurred during the early part of 1883, in Philadelphia, where both were again engaged in court during many weeks, Mrs. Piper also being there. At the conclusion of that case the Pipers visited Hay in his home in Washington, No. 1535 "P" street N. W., where they expected to remain but a few days (on their way to Chicago), but instead remained some six weeks. They did not wish to go away at all, and expressed a desire to spend the balance of their days with the Hays, and that they would be glad to treat them as their children, and that he would be willing to build a larger house, in which they could all live together, and that if they would consent Mrs. Piper could remain and he would go back to Chicago, pack up their trunks and belongings, and return. At that time the household comprised Mr. and Mrs. Hay and a baby boy; the house had five sleeping-rooms, hall-rooms, parlor, dining-room, and was sufficient in every way for the accommodation of the Hay family, leaving them two spare rooms. The house was owned by Hay, and he employed two servants therein. The proposition, however, was not then accepted, the Hays not wishing to give up their private home life (*R., 177, 178*).

The Pipers in their declining years, having absolutely no one near and dear to them, longed for love, affection, and kind attention—in short, a *home*, with all that that term implies; and, even prior to the visit last referred to, Piper wrote to Hay from Philadelphia, January 21, 1883, in which he expressed the wish that he really had the right to call him his boy (*R., 179*); and after the return of the Pipers to

Chicago the Doctor wrote a letter, July 6, 1883, heading it "Dear Son and Daughter," stating, "Thus you have given us the right to address you, and certainly we are both proud and glad to do so" (*R., 256, 257*). Again, March 7, 1884, the Doctor wrote, "Dear Son Edwin," stating, "How glad we should be to see you all, daughter Florence and both the little ones" (*R., 257*). On December 23, 1885, the Doctor sent a letter, addressed "My Dear Boy," in which he expressed his wish to come to Washington as a place of residence, suggesting that he could "command $25,000 certainly, and perhaps nearly as much more," and adds, "We have no relations or friends to whom we owe anything as to the final disposition of our property." The letter closes, "Good night, with much love to you all, son, daughter, grandchildren and all. R. U. Piper" (*R., 180*).

On January 14, 1886, another letter was sent, commencing "Darling Edwin and Florence," stating that the Doctor had made his will, bequeathing to them his entire estate, save about $500, and, further, giving information where the will would be found, and full directions in event of their death, and concluded "As ever, affectionately, Father and Mother Piper" (*R., 180*).

Again, on June 8, 1886, another letter, addressed "Darling son Edwin and daughter Florence," and closing, "and believe us to be now and ever on this side, and the *other* if permitted, your affectionate father and mother, R. U. and E. F. Piper" (*R., 181*).

November 7, 1886, another letter enclosed a duplicate draft for $5,300, which was sent from California, as explained, to insure against loss should Dr. Piper and his wife meet with an accident on their way East (*R., 182, 183*).

Another letter, of November 19, 1886, states cash on hand $20,000, and asks complainant's advice as to its investment (*R., 183*).

A daughter having been born to the Hays, she was named "Elizabeth Frances Piper Hay," at the request of Mrs. Piper, as contained in her letter of December 15, 1886 (*R., 183*).

Finally, Mr. and Mrs. Hay consented to the Pipers' coming to make their home with them, as so insistently urged by the Pipers, as above shown, and communicated that fact in a letter (*R., 184*), in reply to which came a letter, dated March 11, 1887, addressed "My dear son, Edwin," suggesting that if not perfectly convenient for them to come then, they would wait, and adding, "Now, my dear son and daughter, tell us the exact truth in regard to this matter, as *there should surely be no hesitation in stating facts between us;*" signed "As ever, affectionately, Father and Mother Piper" (*R., 184*).

Then, on March 18, 1887, came a letter stating that the Doctor was unwell; that "if we live, and Doctor is able, I think we will start for W. some time next week, today being Friday, the 18th." (*R., 315*).

From January, 1883, until March 25, 1887, at which time Dr. and Mrs. Piper arrived in Washington, to take up their abode with the Hays, at No. 1535 P street northwest, letters innumerable were received from the Pipers, couched in the most affectionate and endearing terms, addressed "Son Edwin," "Daughter Florence," and signed "Father and Mother Piper," etc. (*R., 179–184*). The character of these letters will be found sufficiently indicated in the extracts above given.

It may be here proper to remark, as is above abundantly shown, that during all the years from 1883 to 1887 the Pipers held out every inducement and made every advance to persuade the Hays to consent to the arrangement subsequently entered into. The Hays were not desirous of making the arrangement, and only consented after repeated and continued urging by the Pipers, covering a period of about four years (*R., 155, 178, 184, 265*).

Some time prior to the arrival in Washington of the Pipers, complainant had expended some $3,000 in enlarging his home, erecting a bay window, also a back building, thereby providing an additional and larger dining-room, a sleeping-room, and hall and bath-room, thus making the

home in every way adequate and sufficient for the needs of the Hay family (*R., 186, 187*).

Immediately prior to the arrival of the Pipers complainant, "*realizing that this was to be a lifetime affair*" and in preparation for their accommodation, repainted, repapered, and furnished, entirely at his own cost, two rooms—a bed-room and another room for the Doctor's paintings, etc.—for the exclusive use of the Pipers, in addition to which, of course, they were to have the joint use along with the Hays of the entire house (*R., 146, 186*).

The complainant, testifying on his own behalf, stated the agreement so finally brought about, as above shown, as follows:

"Pursuant to the conversations we had had, and the communications that had passed between us prior to their arrival, they came to live with us as a mother and father would come to live with children, and their dwelling with us was conditioned upon a covenant and agreement entered into that in consideration of permitting them to reside with us in this relationship during the balance of their lives, and the services and care to be given to them, that he (Piper) would build a house in the city of Washington, District of Columbia, in which we would live together, and that at his death, not only the house, but all his property should be willed to me. And Doctor Piper further stated that, should I be taken away, he would provide for Mrs. Hay and the children, as if they were his grandchildren and she his daughter; and that should both of us be taken away during his lifetime, that he would likewise provide for the children, and that he would rear and raise them; and upon this Mrs. Piper and Doctor Piper, Mrs. Hay and myself shook hands, and the Doctor himself called upon Heaven to witness the sincerity of the agreement" (*R., 184, 185*).

Thus the relations were brought about and the *home* arrangements entered into, and from first to last the Pipers paid no board during the years they remained with complainant, and contributed nothing to payment of expenses (*R., 185*).

Shortly after their arrival the Doctor commenced discussing the building of a larger home, the better to accommodate the family as thus augmented; this became his daily thought and topic of conversation (*R., 188, 265*). The Doctor and Mr. Hay looked at a great many lots, and finally the lots on Corcoran street were selected, purchased, paid for by, and conveyed to, Doctor Piper; an architect and builder were selected by the complainant, and the erection of the house, planned to suit him and his wife, was begun in August, 1887. Plans and sketches were made and revised, complainant having drawn the plan according to which the house was built. It was built with especial reference to the accommodation of the two families; was a double house, and made large enough to give the Doctor and wife a bedroom, sitting-room, private bath-room, and an extra room for his pictures. The Doctor desired everything made and arranged to the satisfaction of Mrs. Hay (*R., 105, 111, 128, 188, 189, 265*).

The agreement by the parties hereinabove referred to is further established by the testimony of Mrs. Kearfoot, who, being interrogated in regard thereto, stated:

"It was made in his room at No. 1535 P street. I cannot state the time or date, but it was about the time that the house was being built, and Mr. and Mrs. Hay, Doctor and Mrs. Piper, and myself were present.

"Doctor Piper said that in consideration of Edwin, his son, and Florence taking care of them the rest of their lives, and they being one common family in the house which he was about to build, that he intended and was going to make a will to the effect that this house, as well as the Chicago property and other property of which he might be possessed at the time of his death, to Mr. Hay or Edwin; or, in case of the death of Mr. Hay before their death, the same was to apply with regard to Mrs. Hay, and the property would all go to her; or, in case of the death of both Mr. and Mrs. Hay before their own death, that he would take it upon himself to care for the children and to bring them up and, if possible, to place Edwin's son, that is Ned, Jr., in whom he took

great interest—that he would place him in life, and that then the property would go to the children of Mr. and Mrs. Hay" (*R., 266*).

Interrogated as to what formality, if any, was gone through with on the occasion of this contract being talked of, the same witness adds:

"There was no writing, but they shook hands" (*R., 267*).

While the house was being built Piper employed William A. Cook, attorney, to draw his will, instructing him to include therein the said property on Corcoran street and the lots on which it stands, and all of his property, wherever situate, especially naming certain property in Chicago, devising all of the same to complainant, in trust for testator's wife during her life, and at her death to complainant in fee (*R., 173, 190, 268*). The will was prepared accordingly, and duly executed by Doctor Piper in the presence of witnesses (*R., 173*).

The following extracts from the testimony of witnesses, selected at random from all walks and stations of life, may be here usefully referred to, showing the existence of the agreement between the parties and its terms:

Louis Kaufman, tailor:

"'He is my boy, and I am going to build him the house,' and he told me that he had adopted him, and that Ned was to take care of him for that, and he was to leave him this house. Often he has told me that" (*R., 85*).

Albert T. Coumbe, lawyer:

"He always told me that Edwin was his son and Florence his daughter, and that he looked upon them as his children. He used to talk about building this house, and that Edwin and Florence were to have everything on his death, and that they were to live there as one family, and that Edwin was to have his house at his death" (*R., 89*).

GEORGE A. DARLING, clerk, Treasury Department:

"Always referred to Mr. and Mrs. Hay as his children; always called Mr. Hay 'Son Edwin.' [Speaking of remarks of defendant Piper:] Yes, it is a large house, but I am building it for Edwin and Florence, and they are going to live here, and we are going to live with them" (*R., 93*).

Mrs. PEARL MULLETT, widow of Architect A. B. Mullett:

"Both Mrs. Piper and the Doctor gave me to understand that they were building this house to be used by the Doctor during his lifetime, and that afterwards it was to be Mr. and Mrs. Hay's. He said that he was building the house for Edwin and Florence, and they were to have it at his death" (*R., 104*).

Doctor G. WYTHE COOK, attending physician of the Pipers and friend:

"I heard Doctor and Mrs. Piper both say that they were their children, and that they were to have their property [referring to the house]. The impression was made indelibly upon my mind because I heard him refer to them as his children, and speak of his property in this way so often" (*R., 122*).

W. F. KEENAN, the builder of Corcoran Street house:

"He said he was building the house as a residence for himself during his lifetime; that he had adopted Ed. Hay and his wife as his children, and that at his death this property would go to them. He told me that on more than one occasion" (*R., 126*).

PETER S. KEMON, steam heating, &c.:

"He stated that Mr. Hay and his wife were practically adopted by him, and the house was one that was erected for the benefit of Mr. and Mrs. Hay, and that they were to live with Mr. and Mrs. Hay during their lifetime, and the property was to be Mr. and Mrs. Hay's" (*R., 132*).

RICHARD K. EVANS, lawyer:

"He said: 'I am going to live here always with Ned and Florence, and they are to take care of me all my life, and make it comfortable for me, and I am going to take care of them in consideration for that.' * * * Now I have arranged with Ned or Edwin that he is to provide for me for my life, and in consideration for that I am going to return it by giving all I have to him (*R., 138, 139*).

To the same effect is the testimony of Wm. E. McLean, formerly Deputy Commissioner of Pensions (*R., 118, 119*).

HANNAH FRANEY, cook:

"He said he wanted a larger house to make Edwin a present of; at his death it would come to Edwin and the children" (*R., 144*).

ALBERT S. BROWN, then law student:

"He told me about his plans; that they were going to construct this new house on Corcoran street for Edwin and Florence; that they had adopted him; that he and Mrs. Piper expected to spend the balance of their days with them, and that this house that they were living in (that is, this P Street house) was too small; they didn't have enough room; that a new house was to be built according to Edwin's and Florence's ideas. It was to be built for them and for their home; * * * that in consideration of their care and kind treatment and the home that they would have with them, * * * this property was to be theirs at his death. * * * *He seemed to lay particular stress upon the affection and comfort, and stated that they were something money could not buy.* * * * Told me that he had no near relations; none that cared anything for him, or he cared anything about; that he never had a home, and that what he wanted was a comfortable home" (*R., 165, 166, 170*).

In addition to the foregoing, see also the testimony of James Schouler (the well-known legal author, writer of text-books, and historian, and whose wife was a cousin of Mrs. Piper):

"The impression thus formed was that the Corcoran Street house was built as a common home where Doctor and Mrs. Piper would live for the rest of their lives with the Hay family, *and that they regarded Edwin B. Hay as an adopted son, substantially intending that he should have the property at their death.* Their relations always seemed affectionate, like parents and children, and Doctor and Mrs. Piper always spoke to me of Mr. Hay and his wife in the most loving terms. * * * He always gave me to understand that the arrangement was to continue for life. *I know nothing of what was to be paid, or the terms of board, but understood it was not optional for either party to terminate the arrangement without the consent of the other*" (*R., 50–52*).

Mrs. SCHOULER (wife of the last witness and cousin to Mrs. Piper) testified, in substance, the same as her husband, and added:

"The arrangement was that they were to live with the Hays for the remainder of their lives, and that upon their death the house was to go to the Hays, and that they had made their wills to that effect. * * * I know nothing of any dollar-and-cents arrangement in this matter, but I do know that Doctor and Mrs. Piper were to live with Mr. and Mrs. Hay during their natural lives, and to be taken care of as their parents, and at their death the house on Corcoran street was to go to Mr. and Mrs. Hay" (*R., 53–55*).

The house was finally completed in August, 1888, and the two families moved in. All the furniture was transferred from the P Street house to the Corcoran Street house, and complainant expended about $1,200 for additional furniture; he also removed the crystal chandeliers from the P Street house to the new one, and replaced those removed at his own expense; complainant employed but two servants at the P Street house, and four were required at the Corcoran Street house, thus increasing servants' wages $250 per year; coal, $75 per year before, and $312.50 per year at the Corcoran Street house; water rent, $6.12, increased to $18 per year; taxes, $60 per year formerly, $200 a year for the Cor-

coran Street property; gas, $36 per year, increased to $96 per year; increase about $50 or $75 per month in expenditure for food after Pipers joined the family; thus increasing the household and living expenses of complainant about $1,500 per year during the period the two families lived together, over five years, in addition to the $1,200 expended by complainant for furniture for the new house as above, all paid by complainant. After moving out of the P Street house it remained idle for a year, then rented for a couple of years, then idle again, and so on (*R., 193–197*).

Formal delivery of the property by Doctor Piper to Mr. Hay was evidenced by handing over the keys of the property to complainant and the delivery of possession (*R., 239*).

Doctor Piper was not fond of society; was somewhat peculiar and eccentric; had to have special diet, as he was a dyspeptic; meals required to be just on the hour; lunch always served in his room. He retired promptly at nine o'clock every evening. Complainant and his wife were fond of society and had always gone around a great deal, but thenceforth they both devoted themselves to the entertainment of the Pipers, remained at home, and brought in friends to entertain the Doctor. Prior to the time when the Pipers came to live with the Hays, the latter spent a part of the summer months away from the city and closed their house. Afterwards the house was kept open all summer, even if the Hays were away (*R., 146–151, 160, 161, 187, 197, 198, 199, 267*).

The Pipers were perfectly happy and contented in their home life, as appears abundantly throughout the entire record, and the relations continued most cordial and pleasant up until the departure of the Doctor and his wife for Saratoga, in August, 1892.

It seems that, without the knowledge of complainant, and on the night prior to their departure, namely, on August 25, 1892, both the Doctor and his wife had executed wills, and had left them in a drawer in their apartments in the

Corcoran Street house, where they were found several years later. The will of the Doctor, subject to two legacies amounting to $2,500, and one picture with frame, left all of his estate, real, personal, and mixed, to the complainant, to be his absolutely, and appointed him executor (*R.*, *280*).

While in Saratoga many letters were received from the Pipers from September 2, 1892, to November 26, 1892, the letter being the last letter written by Mrs. Piper before her death (*R.*, *292–296*). It will be noted that these letters were the same in tone as all of the letters heretofore referred to, and the very last letter written by Mrs. Piper before her death, indicating her changeless affection and entire satisfaction, is addressed "Dear Son Edwin," and concludes, "As ever, affectionately, Mother Piper" (*R.*, *296*).

During their visit in Saratoga, Mr. Hay made five trips at his own expense, in obedience to Doctor Piper's requests (*R.*, *201*, *202*). During one of these visits, and on December 6, 1892, Doctor Piper made and executed a will, sitting by the bedside of his then dying wife; which will devised his property, including the Corcoran Street house, to his wife for life, and at her death to the complainant in fee-simple, subject to certain bequests of personal property, and appointed complainant the executor. Said will was duly executed in the presence of three witnesses (*R.*, *82*, *83*, *203*).

Mrs. Piper died January 3, 1893, at Saratoga (*R.*, *203*). Doctor Piper was very much affected by her death, and did not return with the remains. Complainant went to Saratoga, made all the arrangements, and brought the remains back. The Doctor, owing to the use of drugs and stimulants of some kind, had become quite unmanageable and was in the charge of a physician and nurse. At that time one Thomas, of Chicago, who had been an acquaintance of Doctor Piper and had acted for him as an agent, arrived on the scene (*R.*, *205*); complainant went to Saratoga twice subsequent to the death of Mrs. Piper to bring the Doctor home, but each time it appeared that he

was not well enough to stand the journey. On January 25, 1893, Thomas suddenly left Saratoga for Chicago, taking the Doctor with him, although not a hint of such contemplated removal had been communicated to the complainant. From that time until about June, 1895, the Doctor was kept in Chicago, completely under the influence of Thomas, and although complainant made two trips to Chicago at his own expense, and at the request of Piper, by letters and telegrams, to bring him back, he did not succeed in accomplishing it (*R., 212–216*). Subsequently and in June, 1895, the defendant Whitney visited complainant to inquire about her uncle, and being informed of the state of affairs existing, said she would go to Chicago and bring him home (*R., 217*). It seems she went to Chicago, but instead of bringing the Doctor home, as promised, she took him to her home at Newport, Maine. From then on it will be noted that the tone of the correspondence entirely changed, and was carried on in the handwriting of the defendant Whitney, the signature only being that of the Doctor. While in Chicago it seems that Thomas had succeeded in having Piper execute a deed in trust to the defendant Moore of all his property in favor of Thomas as beneficiary. Most of the Newport correspondence refers to proceedings proposed to be instituted in Chicago to set aside that deed (*R. 218–221*).

In June, 1896, the defendant Whitney called upon the complainant in Washington, but nothing was said by her about any then contemplated conveyance to her from Dr. Piper of the Corcoran Street house (*R., 224*).

On August 4, 1896, Dr. Piper executed a deed of conveyance to the defendant Whitney of the property in suit, but the deed was not recorded until October 17, 1896 (*R., 301, 302*). No notice of any kind was given complainant of the execution of said deed, and the first knowledge acquired by him was from its being recorded (*R., 224*).

The defendant Whitney, grantee in said deed, was a niece of Piper, born on October 9, 1865, and from the first time her uncle saw her, which she thinks was when she was a baby, she did not see him again until she came to Washington, in 1889, a period of twenty-four years (*R., 60*). (The record further shows that during the years and until Dr. Piper was taken to Newport he had no communication whatever with any of his relations.) The defendant Whitney testifies that the Doctor gave her the deed *without any consideration*, except that she gave him a life lease back. "*I never gave him any more than that*" (*R., 62*). That defendant Whitney had knowledge of the existing conditions between the Piper and Hay families when she visted there in 1889 is clearly indicated by the fact that she told complainant that upon her return home after said visit she had told her mother that her uncle and aunt were nicely fixed, and "he seemed to be very fond of the people with whom he resided, and that he no doubt would leave his property to them by will" (*R., 223*). Defendant, testifying in her own behalf, admits substantially the statement just quoted, and adds, "I thought possibly he might remember them in his will" (*R., 60*).

As above shown, the agreement on the part of complainant had become fully executed and performed, so far as Mrs. Piper was concerned, up to and including the time of her death; and while the Doctor thereafter continued to remain away from the home so established, no default can be charged against complainant because thereof, as he constantly kept the Doctor's rooms intact for his use and urgently and constantly requested the Doctor to return to his home; hence, so far as complainant is concerned, the evidence is uncontradicted that he faithfully and in all respects kept and performed his agreement (*R., 215, 222, etc.*).

The foregoing references to the testimony indicate substantially the character of the proofs and evidence in this case, and the facts so recited are absolutely uncontradicted and cannot be questioned. A few objections (aside from the

legal features of the case) have been referred to by defendants as tending to show reasons why complainant is not entitled to specific performance of the agreement. For example, it is objected that complainant failed to carry out some trifling features of his contract; that the Doctor's room was not kept as warm as he liked it (although everyone else found it hot to suffocation); that at times his steak was not cooked to suit him, and that Mrs. Hay displeased him by changing her religion and becoming a Catholic, and it is pointed out by defendants that thereupon the Doctor went to Mark D. Brainard, a lawyer, to change his will (but even that will recognized an obligation to complainant, as it contained a legacy in his favor for $10,000); that Mrs. Hay was disagreeable and his wife unhappy, although all the correspondence refutes the charge. There seems to be no specific complaint against complainant, nor any charge that he neglected, in any way, to carry out and faithfully perform the obligations of his agreement (*R., 62–64–67, 68, 72, etc.*).

It is also objected that complainant signed a lease with Dr. Piper in respect of the occupation of this property. In connection with this lease it is to be observed that the same was not thought of nor executed until October 20, 1893 (*R., 42*), at which time the Doctor was under the complete domination of Thomas, at Chicago, and from whom it doubtless emanated. Complainant explains the circumstances of its execution. It was a part of complainant's agreement to care for, support, and maintain Dr. Piper during his life (Mrs. Piper having died, as above shown, and complainant's contract, so far as she was concerned, having thereby become completed and executed), and inasmuch as the Doctor, although through no fault of complainant, continued to remain in Chicago, the complainant recognized it as being part of his obligation to contribute toward the maintenance of the Doctor, and—

"Realizing the situation of Dr. Piper, and not knowing what might be done by Thomas to rob both Dr. Piper and

myself of the home, and wishing to make an allowance to Dr. Piper, to which he was entitled, I signed this lease, knowing that whatever might occur it would hold me in possession of the property at least during its existence, and that before that time the adjustment of the matters by Dr. Piper and myself would be consummated, looking to his return home and his continuing with us, in accordance with our agreement. I complied with the terms of the lease, after it was signed by me, and I never denied the right of Dr. Piper to have an allowance made to him, if he so desired it" (*R., 214*).

He further testified that the paper was not intended to release Dr. Piper from the original agreement, and that the allowance to him in lieu of board seemed justifiable, whether made in that form or another (*R., 216*).

This explanation is borne out and corroborated by the following evidence. Along with the lease, the following paper was sent to him by the Doctor for execution and return, but which complainant did *not* execute:

"Whereas, certain dealings and agreements have heretofore been had and made between Edwin B. Hay and Richard U. Piper, among which were certain agreements and transactions in relation to the house, No. 1512 Corcoran street, in the city of Washington, D. C., and

"Whereas, the said parties have this day, made a full settlement of all amounts, accounts and agreements heretofore had, made and entered into between them,

"Now, therefore, I, Edwin B. Hay, do hereby acknowledge that I have received full payment and satisfaction of all the claims and demands in any way arising or growing out of any agreements or transactions heretofore had between the said Piper and myself; *and further that I have no claim or interest of any kind or nature in the premises above described, No. 1512 Corcoran street, in the city of Washington, D. C.*, except the leasehold interest which I have therein under the lease from the said Piper, bearing even date herewith.

"In witness whereof, I have hereunto set my hand and seal this 20th day of October, 1893" (*R., 216*).

This release complainant persistently refused to execute, although Dr. Piper continually requested him to do so. In a letter dated April 9, 1894, the Doctor states:

"You seem to have forgotten that I sent you a receipt *gotten up by the Judge*, which you were to sign and return. I do not see why you cannot please me in this by doing what I have several times requested. You know I have treated you finely in my will" (*R., 217*).

In another letter of the same purport, bearing date July 9, 1894, the Doctor states:

"I should like much to have *the receipt which the Judge made for me*, which I have requested several times. * * * Very truly, R. U. Piper, by T. Dictated" (*R., 257, 258*).

[NOTE.—This letter is in the handwriting of Thomas.]

Still another letter from the Doctor, dated July 29, 1894, states:

"Have you not received my letter containing rent receipt, etc.? * * * I have before told you I have left you in will many times the whole rent, etc. Please send me receipts asked for as soon as possible" (*R., 280*).

Dr. Piper subsequently told complainant that the whole matter of the lease was a part of a scheme of Thomas and instigated by him (*R., 217*), and that fact is strongly corroborated by the physical and mental condition of Piper at the time of Thomas' control over him and the execution of the conveyance for Thomas' benefit. If complainant was nothing more than a tenant of Dr. Piper, what was the necessity for securing and insisting upon the execution of a release of the character above indicated?

Argument.

I.

An agreement to devise land may be specifically enforced in equity.

In the court below counsel for appellant in their printed brief stated:

"That a person may make a contract binding himself to dispose of his real estate by will, in a particular manner, and that such contract may, under certain circumstances, be specifically enforced, is admitted; but such a contract is always looked upon with suspicion, and when sought to be established by oral testimony and to be specifically enforced, must be fair and equitable in its conditions, based upon an adequate consideration, and fully or substantially performed by the parties seeking such relief."

It was insisted, however, by counsel for appellant, that such contract had not been made out by the *proofs* in this case. It may be here remarked that the limitation of the rule, as stated by counsel for appellant and above quoted, that "such a contract is always looked upon with suspicion," is not supported either by the authorities cited or by reason.

While the objection was not interposed in the pleadings and not relied on therein, counsel for appellant, notwithstanding their statement of the rule of law, as above quoted, have insisted that this contract was not in writing, and that therefore this case comes within the prohibition of the statute of frauds and cannot be sustained.

That complainant has fully established by the proofs the contract sued upon would hardly seem to admit of serious controversy, and that the authorities and decided cases thor-

oughly support the decree passed in this case seems equally conclusive. Take, for example, the following cases:

"Specific performance of parol agreement will be compelled by a court of equity where one party to it has wholly or partially performed it on his part, so that its non-fulfillment by the other party is a fraud."

Johnson *v.* Hubbell (10 N. J. Eq., 332).
Rivers *v.* Rivers' Ex'rs (3 Desau., 195).
Izard *v.* Middleton (1 Desau., 116).

In Johnson *v.* Hubbell (10 N. J. Eq., 332) the court held:

"Agreements for family arrangements with respect to property are viewed with favor by this court. They ought to be respected and scrupulously carried out by the parties to them; and if they are not, a court of equity ought to enforce their execution.

"Held: That an agreement, on good consideration, and without fraud or undue influence, to devise land, is valid, and will be enforced by compelling a conveyance from heirs of the promisor or purchaser *with notice from him in his lifetime.*"

David C. Rarsell *v.* Abraham Stuker (41 N. Y., 48).
James Davidson *v.* James W. Davidson (13 N. Y., 246).
Van Dyne *v.* Vreeland (12 N. J., 143).
Gupton *v.* Gupton (47 Mo., 37).
Hyatt *v.* Williams (78 Mo., 214).
Twiss *v.* George (33 Mich., 253).
Warren *v.* Warren (105 Ill., 568).
Atkinson *v.* Jackson (8 Ind., 31).

Again, in Pfluger *v.* Pultz (43 N. J. Eq., 440), a case quite similar in its facts to the case at bar, the syllabus correctly states as follows what was there decided:

"In June, 1883, defendant *verbally* agreed with the complainant that if she would do his housework and take care of him during the remainder of his lifetime, he would devise to her the house and lot wherein he then lived. She did

thus care for him until 1886, when, without sufficient cause, he left the place to live with one M., and shortly afterwards made and delivered to M. a deed for his house and lot, taking from M. a bond conditioned that M. should support him during his lifetime.

"Held: First, that complainant was entitled to relief by enjoining the conveyance of the property to M.; second, that the agreement was not invalid under the statute of frauds, and was enforceable."

This case of Pfluger *v.* Pultz is so nearly identical in its facts with the case at bar that the attention of the court is particularly asked to the opinion there rendered.

So, in the case of Brinker *v.* Brinker (7 Pa. St., 53): Brinker resided with his father upon a tract of land, was about to remove, and the father agreed that, if he would remain, he would, under certain conditions, devise the land to him by will. The son assented to the terms, and the father made his will accordingly, but the will was thereafter destroyed, lost, or stolen. Chief Justice Gibson, delivering the opinion of the court, stated:

"As the agreement was to convey the estate by will, it cannot be executed to the very letter * * * and though the case before us is not within the letter, it is certainly within the equity and spirit of it. * * * What difference can it make, in reason or justice, whether the conveyance was to be by deed or will? The same good faith which requires it to be enforced in the one case requires it to be enforced in the other—not in form but in effect.

"The statute of frauds interposes no bar to it; not perhaps for the supposed part execution of the contract, for possession does not distinctly appear to have been changed in pursuance of it; but because the terms of it were put in writing in the father's will; and though the will itself is lost, the substance of the devise is proved. Cannel *v.* Buckle (2 P. Williams, 243), in which an instrument designed as a deed, but became void by subsequent circumstances, was allowed to operate as a written agreement in order to satisfy the statute, is very like the present case.

"As the will contained the conditions of the contract, the parties had done enough to satisfy the statute."

Citing—

Robertson *v.* Robertson (9 Watts, 32).
Woods *v.* Farmare (10 *id.*, 195).
Haslit *v.* Haslit (6 *id.*, 464).
Sage *v.* McGuire (4 Watts & Serg., 228).

In Stone *v.* Hayden (62 Mo., 101–115), in a suit of this character, it was held:

"First, and generally, that equity will sustain an action of this description; second, that such promises, if not clothed in technical terms, would be sufficient, if no doubt remained as to intention; third, that the promise need not be in writing, but would be sufficient if made orally; fourth, that the agreement having been acquiesced in and carried out by the party complaining is sufficient to be sustained. * * *

"There are things which money cannot buy; a thousand nameless and delicate services and attentions, incapable of being the subject of explicit contract, which money, with all its peculiar potency, is powerless to purchase. The law furnishes no standard whereby the value of such services can be estimated, and equity can only make an approximation on that direction by decreeing the specific execution of the contract."

And again:

"A contract for the adoption of a child, and leaving all of one's property upon such person's death to such child, is a valid contract, and upon performance of such duties by child, such contract or agreement, although oral, is taken out of the statute of frauds, and will be specifically enforced."

Van Dyne *v.* Vreeland, 11 N. J. Eq., 370.
Davison *v.* Davison, 13 N. J. Eq., 246.

In the recent case of Burdine *v.* Burdine's Executor, decided September 13, 1900, supreme court of appeals of Virginia (Virginia Law Register, vol. 6, No. 6, pp. 389–396), it was held that agreements to dispose of property by will may

be enforced, the court citing, in its opinion, 3 Parsons on Contracts, sec. 406 (6th Ed.); Hale *v.* Hale (90 Va., 728, 730); Cox *v.* Cox (26 Gratt., 310), (the latter being a case of verbal agreement to devise property by will). See also Rice *v.* Hartman (84 Va., 251); Thomas *v.* Armstrong (86 Va., 323); Graves, Real Prop., 97.

The case of Shakespere *v.* Markham (72 N. J., 400), cited by appellant, expressly recognizes the rule that equity may enforce specifically the performance of contracts to dispose of property by will.

The same rule of decision has been uniformly adhered to and followed in the decisions of this court, as will appear from the following cases:

In the case of Neale *v.* Neales (9 Wall., 1–12) a father agreed, in parol, to give land to a woman about to marry his son (who was an improvident person), she promising to build a house upon it out of her own money. Possession was delivered, the house was built, but the father refused to convey. Thereupon a bill was filed by the son and wife against the father, setting up said parol agreement, its performance on the part of the donee, and a specific performance prayed accordingly. It was objected, in that case as in the present, and as in many others, that the contract was not in writing, and that therefore, under the statute of frauds, relief could not be afforded. The court, however, declined to accept that view and held:

"Equity protects a parol gift of land equally with a parol agreement to sell it, if accompanied by possession, and the donee, induced by the promise to give it, has made valuable improvements on the property."

And again, in the case of Townshend *v.* Vanderwerker (160 U. S., 171–184), Mr. Justice Brown stated:

"The general principle to be extracted from the authorities is, that if the plaintiff, with the knowledge and consent of the promisor, does acts pertaining to and in obvious re-

liance upon a verbal agreement, which so changed the relations of the parties as to render a restoration of their former condition impracticable, it is a virtual fraud upon the part of the promisor to set up the statute in defense, and thus to receive to himself benefits done by the plaintiff while the latter is left to the chance of a suit at law for the reimbursement of his outlays, or an action upon a *quantum meruit* for his services."

Aside, however, from the foregoing authorities, it would seem that the case at bar has been decided on all points by the decision of this court in the case of Brown *v.* Sutton (129 U. S., 238–248). In that case the court held, what is thus correctly expressed in the syllabus:

"1. That the appellant's intestate intended that the property in dispute should belong to the appellee, that he bought it for her, and that he promised her *orally* that he would make over the title to her upon the consideration that she should take care of him during the remainder of his life, as she had done in the past.

"2. That there had been sufficient part performance of this parol contract to take it out of the operation of the statute of frauds, in a court of equity, and to render it capable of being enforced by a decree for specific performance."

It will be observed that there the court sustained the relief prayed in a case where the contract and dealings of the parties rested entirely in parol and without the support and corroboration of writings, so far as disclosed by the report of the case. The case at bar, however, is much stronger on the evidence, since the record is simply filled with writings, letters, wills, etc., which strongly corroborate and support the fact of the existence of the contract alleged in the bill, as well as its terms, thus making it absolutely certain beyond controversy, *not only* that such a contract did exist, but the terms of it.

II.

A PROMISE TO TRANSFER THE TITLE OF REAL PROPERTY BY WILL IS EQUALLY ENFORCEABLE WITH ONE TO TRANSFER BY DEED.

This principle and rule of decision is recognized and affirmed in the decisions above referred to, the material element in such case being the certain intention to transfer the property, and not the particular manner in which the transfer of title is to be effected.

See Van Dyne *v.* Vreeland (11 N. J. Eq., 370–381); Pfluger *v.* Pultz (43 *id.*, 440); Carmichael *v.* Carmichael (72 Mich., 76, 85); Gupton *v.* Gupton (47 Mo., 37); Sharkey *v.* McDermott (1 *id.*, 647); Neale *v.* Neales (9 Wall., 1); Brown *v.* Sutton (129 U. S., 238), and Townshend *v.* Vanderwerker (160 U. S., 171).

This principle applies not only in the case of agreements where the date of the promised conveyance is fixed and certain, but also where it is unfixed and indefinite. Brown *v.* Sutton (*supra*); Townshend *v.* Vanderwerker (*supra*); Young *v.* Young (45 N. J. Eq., 27), and Lamb *v.* Hinman (46 Mich., 112).

III.

ASIDE FROM THE MEMORANDA OF THE CONTRACT, ESTABLISHED BY THE VARIOUS WRITINGS SET FORTH IN THE RECORD AND BY THE ORAL TESTIMONY, THE ACTS OF PERFORMANCE BY COMPLAINANT ARE SUFFICIENT TO TAKE THE CASE OUT OF THE STATUTE OF FRAUDS.

In the present case all the facts strongly tend to show that the acts of performance on the part of complainant

directly refer to and result from the agreement relied upon. His relations to Piper were undoubtedly such as they would not have been in the absence of an agreement of some kind. The conduct of complainant's household and of his private home life was entirely changed; his household and living expenses substantially increased; his cares at home augmented, his family enlarged; and upon his domestic and social life were imposed conditions and restraints to secure the comfort and gratify the whims of an aged couple. All of this was done upon the express solicitation and with the knowledge and consent of Piper and his wife, who were the recipients of the benefits accruing to them from the acts of the complainant, who was thus performing his part in faithfully keeping the agreement which had been so solemnly entered into; and, as above shown, his agreement, so far as it embraced Mrs. Piper, was fully and completely performed and terminated at her death.

In the case of Lamb *v.* Hinman (46 Mich., 112) Judge Cooley clearly expresses the reason of the rule as follows:

"The reason why taking possession under an oral contract is recognized as a ground for specific performance when payment of the purchase price is not, is that in one case there is no standard for the estimate of damages when the contract is repudiated, and in the other there is a standard that is definite and certain. A purchaser who takes possession of land under an oral purchase is likely in so doing to change very considerably—perhaps wholly—the general course of his life as previously planned by him; and, if he is evicted on a repudiation of the contract, any estimate of his loss by others must in many cases be mere guesswork."

That such acts of performance as appear in this case are sufficient to take the case out of the prohibition contained in the statute of frauds is conclusively shown by the authorities above cited, and is particularly decided adverse to the contention of appellant herein in the cases of Neale *v.* Neales, Brown *v.* Sutton, and Townshend *v.* Vanderwerker, *supra*, in

none of which cases would it appear that the acts of part performance there relied upon were nearly so strong and convincing as those set forth in the present record.

IV.

SUCH AGREEMENTS SOUGHT TO BE ENFORCED MUST BE CERTAIN IN ESSENTIAL TERMS. THE CERTAINTY OF PROOF REQUIRED IS NOT ABSOLUTE, BUT REASONABLE.

In the case of Mundy *v.* Jolliffe (5 Myl. & Cr., 177) Lord Cottenham, speaking of the great injustice which would arise from permitting a party to escape from an engagement entered into, upon the ground of the statute of frauds, after the other party to the contract has acted upon the faith of such engagement and has expended his money or otherwise acted in execution of the agreement, states:

"Under such circumstances, the court will struggle to prevent such injustice being effected, and, with that object, it has, at the hearing, when the plaintiff has failed to establish the precise terms of the agreement, endeavored to collect, if it can, what the terms of it really were."

And, again, in the case of Neale *v.* Neales, *supra*, the same rule of proof was followed, as thus stated in the syllabus:

"In case of an alleged contract, by a father, of this kind, *reasonable certainty as to the fact and terms of it is all that equity required.*"

Again, in the case of Brown *v.* Sutton, *supra*, the court, speaking of a similar parol promise, stated:

"Any such promise must be largely inferred from the situation and circumstances of the party, and must depend almost wholly on verbal statements made by Mr. Kenyon to others" (*p. 242*).

See also Pomeroy, Specific Performance, sec. 137.

V.

THE PRESENT CONTRACT IS DEFINITE AND CERTAIN IN ITS TERMS, AND IS NOT OPEN TO THE OBJECTION OF WANT OF MUTUALITY.

(*a.*) It is claimed by appellant, among other things, that the contract cannot be enforced, because of its *indefiniteness.*

There is probably no objection more universally urged in suits for specific performance than that of indefiniteness, and courts have frequently remarked, speaking of this very objection, that where friends, having confidence in each other, make a bargain, with no suspicion of want of good faith, it would be extraordinary to reduce every provision to writing or to provide for every possible detail or contingency.

The evidence above, gone over in detail, establishes with much more reasonable certainty the terms of this agreement, and need not be here repeated.

In the case of Tolson *v.* Tolson (10 Md., 159) a provision in the will of testator requested his seven sons "to take care of their brother John and his family," and it was objected that the language was too indefinite; but the court sustained the devise in favor of the son John, due regard being had to his condition in life, etc.

And so in the case of Willett *v.* Carroll (*13 id., 459*) the will directed that a certain person "shall have a home during her natural life, on the farm hereinbefore bequeathed unto W."

It was there objected that such provision was too indefinite to be enforced by the court, and therefore void for uncertainty; but the court overruled such objection and held the provision in question to be valid and enforceable, due regard being had to the value of the estate, its income, and the situation of the parties, condition and habits in life, etc., the court adding:

"The word *home*, not only in its true etymology, but in its ordinary acceptation, means something more genial than a mere privilege to perambulate a dreary room."

Much stronger is the case at bar, where Dr. Piper and his wife, prior to the making of the agreement, "*had never had a home*" (*R., 170*). After the making of the agreement they for the first time had such a home, for which they had longed. Thereafter they continued to express, as shown by the undisputed testimony and writings in the case, their happiness, contentment, and entire satisfaction with the performance by complainant of his agreement during a period of more than five years, and right up until their departure on what was supposed to be but a temporary visit to Saratoga for the benefit of the health of Dr. Piper, but on which visit his wife died, and from which place the Doctor was first taken to Chicago, and there kept for some time by Thomas, and afterwards taken to Newport, Maine, by his niece, and there kept under her control.

So that it would seem clear that the objection of uncertainty and indefiniteness cannot be successfully interposed in this case.

(*b.*) Again, it is insisted by appellant that the contract is not *mutual*.

This objection, like the other, is one of universal use in cases of this kind, where parties seek to resist the performance of obligations solemnly incurred. In this connection it is to be borne in mind that it is not disputed that complainant, without objection from either, faithfully performed and kept his part of the bargain, and Mrs. Piper passed away while he was still so performing and keeping his agreement; and, so far as the Doctor was concerned, complainant faithfully performed and fulfilled it so long as he himself permitted such performance, even keeping his rooms for him, unused, for years, and continually tendering himself as ready,

anxious, and willing at all times to completely carry out and fulfill his contract.

But there is another principle of equity equally applicable, and which must be borne in mind in connection with such objection so interposed by appellant, and that is that where a party not originally bound by his covenant has completely performed, so that he may no longer be restored to the condition he occupied prior to such performance, it does not lie with the other party to complain of the original want of mutuality, even if such had in fact then existed.

This is fully shown by the foregoing authorities, and see also Fry, Specific Performance, sec. 445, p. 204; 3 Pom. Eq. Jur., p. 2163; Woodruff *v.* Woodruff (44 N. J. Eq., 349); Wilkes *v.* R. R. Co. (79 Ala., 180); Warren *v.* Warren (105 Ill., 568–574); Burdine *v.* Burdine's Ex'r (*supra*), and Brown *v.* Sutton (*supra*).

As well stated by the opinion of the court below herein, speaking of this feature of the case:

"Here, a 'definite contract for mutual considerations' is alleged to have been made. Each was under obligation to the other, and neither was at liberty to withdraw without the consent of the other. As stated by the witness, James Schouler: 'It was not optional for either party to terminate the arrangement without the consent of the other'" (*R.*, *322*).

And in the same connection the opinion of said court below, speaking of the decision in Madison *v.* Alderson (8 App. Cas., H. L., 472), relied upon by the appellant, and especially urged in support of this claim of want of mutuality, adds:

"If, however, there were no differences between the two cases, in respect of the obligation of the complainant to continue his care and support during life, we could not follow the decision in Madison *v.* Alderson, because it is opposed, on that very point, to the decision of the Supreme Court of the United States in Brown *v.* Sutton, *supra*" (*R.*, *322*, *323*).

VI.

THE DECREE OF THE COURT BELOW WAS CORRECT AND SHOULD BE AFFIRMED.

The two decrees in this case, that of the trial court and that of the Court of Appeals, were in favor of complainant. The case stated in the original and supplemental bills of complaint is fully established by the *proofs* in the case, and the *authorities and decided cases* fully sustain the right of a court of equity to grant relief by way of specific performance, such as was decreed herein, and the decree of the court below, being right, should be *affirmed*.

Respectfully submitted.

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Attorneys for Appellee.

WASHINGTON, D. C., *November* 13, 1900.

[NOTE.—At the time of the preparation and printing of the foregoing brief counsel for appellee have not been furnished with copy of brief for appellant. Should it hereafter appear that appellant relies upon facts or propositions not covered in this brief, counsel will ask leave to file supplemental brief in reply.]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 112.

ANNA V. WHITNEY, APPELLANT,

vs.

EDWIN B. HAY, APPELLEE.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEE.

Counsel for appellee have just had opportunity to examine the brief of appellant (in proof sheets), and inasmuch as some matters are urged therein not covered in the brief of appellee as now printed, counsel respectfully submit the following as a supplemental brief on behalf of appellee:

(*a.*) The effort is made in appellant's brief to show that when the Pipers left the house on Corcoran street to go to Saratoga, *ostensibly* for only a temporary absence, it was really because of dissatisfaction on the part of the Pipers, and the inference is sought to be drawn therefrom that that was really a permanent severance of the relations. Such fact, however, is not supported by the evidence.

It has already been shown that on the night immediately preceding such departure, Dr. Piper, of his own volition

(and unknown to complainant for some time thereafter), made a will in accordance with his agreement, and the letters and communications from Saratoga, both from the Dr. and Mrs. Piper (already referred to), clearly indicate that the relations had not then been terminated.

That the relations were not considered terminated by either party while the Dr. was in Chicago is also clearly shown. The Dr. was taken to Chicago by Thomas, who had been Piper's agent for certain property in Chicago (*R., 213*), and complainant had been introduced to Thomas by Dr. Piper in 1882 (*R., 260*); the removal of the Dr. from Saratoga by Thomas was without complainant's knowledge (*R., 206*).

While in Chicago, after having been so removed, a number of letters were written by the Dr. to complainant, all showing his intention to return to his home in Washington.

Letter of March 13, 1893:

"Expect to start for Washington soon. Hope you will not go away from home to be gone long at a time, as I want to see you on my arrival" (*R., 209*).

Letter of April 11, 1893:

"I shall be in Washington before many weeks, I hope; everything looks that way" (*R., 209*).

It seems that the Dr. then went with Thomas to Hot Springs, from which latter place he wrote another letter:

"I deemed it best to make a visit to this place prior to my going to Washington. * * * I shall remain here for a week or ten days, when I shall return to Chicago, from thence to Washington, probably" (*R., 210*).

Letter of August 1, 1893:

"I will not write at all about business matters, or our relations to each other, but must wait for a personal interview when I hope all will be explained and settled between us. Affectionately, R. U. Piper" (*R., 210*).

A letter of August 23, 1893, written from Chicago:

"Send my next to me *personally* care of I. H. Frye, * * * 2839 Cottage Grove avenue" (*R., 210*).

(This was the first evidence given by the Dr. that his letters were being inspected, etc.—*R., 210.*)

In the same letter the Dr. continued:

"What I say to you in this, you must not even *hint* at all to any one. The Dr. will do everything I believe he can to prevent my coming East, and I think you had better come on here as soon as you can make it convenient. I *mean* to go back with you if I am able. He, the Dr., sees all my letters and hence I shall have to show him yours, as it will seem strange if I did not. * * * Get some official summons of some kind, as you can do before a committee in the Court of Claims, calling me to Washington. Something of the kind will ease matters very much" (*R., 210, 211*).

Letter of August 26, 1893:

"I cannot put on paper, nor must you even hint at what I write. Certainly I am treated with the utmost kindness and attention by Dr. Thomas and his family. * * * Be particular as to what I say as to coming to see me at the house, so that I can see you alone" (*R., 211*).

Then followed some letters and telegrams from Piper, because of his failure to hear from complainant, the latter, as it turned out, being away from the city (*R., 212*).

On August 30, 1893, Piper fell down stairs, and as a result was confined to his bed, so that when complainant went to Chicago, as so requested, he found Piper's condition such that he could not be removed at that time. At that visit the Doctor expressed a desire to come back with complainant, "and cried copious tears because he could not come" (*R., 213*).

The above letters would seem to indicate that during all that time Dr. Piper was most desirous of returning to his home in Washington, and was only prevented by a combination of circumstances.

(*b.*) It was in June, 1895, when the appellant visited complainant in Washington to ascertain from him the whereabouts and situation of Dr. Piper, and went to Chicago for the purpose of bringing him home, but instead took him to her home in Newport, Maine; the first information of which latter fact received by complainant was the receipt of a letter from Newport, dated June 22, 1895, advising complainant of his arrival at that place, the letter being in the handwriting of Miss Whitney and signed by the Doctor. That letter states:

"*I am here on a visit for the summer*" (*R., 218*).

Then followed the letter of July 3, 1895, referred to in appellant's brief, in which the following statement appears:

"Would you not like the whole house, providing we can make a treaty to that end?" (*R., 218*).

This letter was also in the handwriting of the appellant and signed "R. U. Piper, per W.," by her.

Still another letter, dated July 13, 1895, also in the handwriting of appellant, signed as before, "R. U. Piper, per W.":

"I am expecting to depend on you to arrange affairs in Chicago" (*R., 219*).

Again, July 21, 1895, a letter written by the appellant and signed as before, "R. U. Piper, per W.":

"You will come and stop with me while here, and I will hope to see you very soon" (*R., 219*).

Again, letter of July 30, 1895, written by appellant and signed as before, "R. U. Piper, per W.":

"I am very glad to know you are coming so soon" (*R., 219*).

Then, on November 2, 1895, another letter written by appellant and apparently signed by the Dr., concluding:

"With many thanks for your kind inquiries, I will say that we are all quite nicely now, and with the hope that this will find you and yours well, R. U. Piper" (*R., 221*).

It will be thus observed that Piper was, during his entire stay in Newport, under the control of appellant; that she conducted his correspondence for him, even to the extent, in many instances, of signing the letters for him. It is also a significant fact in this connection that while the Doctor's letters had always been of an affectionate character, the tone instantly changed when he arrived in Newport, until they became the most formal business letters, studiously avoiding all expressions of affection.

(c.) Counsel for appellant, as appears by their brief, seem to place considerable reliance upon the testimony of Piper taken in this case, and the denials therein. Counsel for appellee had not supposed that such testimony would be seriously urged for consideration in this case, and this for the reasons stated in the brief of appellee. It may, however, be proper to refer the court to some features of the testimony of Dr. Piper for the purpose of showing that it cannot be relied upon in this case. The Court of Appeals disposed of his testimony as follows:

"He is contradicted in many material points by the statements made in his own letters and by overwhelming proof of his declarations to the contrary. It is just, however, to say, that his whole deposition tends to corroborate the evidence of the impairment of his mind and memory in December, 1892" (*R., 325*).

Without here setting forth extracts from the testimony of Dr. Piper, the court is respectfully referred to his deposition as it appears in the record (*pp. 34–41*), from which it is conclusively shown that the Dr. made most extravagant de-

nials of everything, even in the face of his own letters, and as to many other matters, material to the case, he was unable to remember.

(*d.*) In support of the contention that the exact contract was vague and indefinite, and as to the exact beneficiary intended, etc., it is urged by appellant that the witness Brainard testified that the proposed provision was in favor, not of the complainant, but of the complainant's son, and reference is made to the record (*pp. 69–71*). There is no necessity for any misunderstanding as to what this witness said. He was interrogated as to the arrangement existing between the parties when they came to Washington to live with complainant, and said:

"My recollection is rather indistinct as to that. I learned that they intended to make their home with your family, and for living with you they intended to make your son Edwin their heir. * * * My impression was that your son was to be made an heir at that time" (*R., 269*).

The complainant had and has a son named Edwin, and it seems that this witness was confused in his recollection as to which "son Edwin" was referred to. He seemed to have thought that it meant Mr. Hay's son. That this witness was confused as to this is made entirely clear by a further statement in his testimony, where, being interrogated as to the provisions contained in the former will of Dr. Piper (the one drawn by William A. Cook and already fully referred to), and which will, it seems, testator destroyed at the time Mr. Brainard prepared the subsequent will, he states:

"Well, I think I have already stated in my testimony that there was a bequest in that will, according to the best of my recollection, in favor of Mr. Hay's son. I cannot state definitely what it was. I read it over. The will was destroyed and the matter passed out of my mind" (*R., 71*).

The above extracts from his testimony clearly show that the witness was confused as to the use of the term "son Edwin," and that his testimony in no way tends to make uncertain or indefinite the terms of the contract between the parties.

Appellant further refers to what is called an agreement (*Exhibit A, R., 281*) which was offered in evidence by defendant on the cross-examination of complainant, although its introduction was objected to at the time (*R., 235*). It may be remarked in connection with this paper that its production has never been explained in any way. It was not identified; it had never been executed by any one; complainant testified that he did not remember having ever seen it before or a copy of it (*R., 234*); and although Dr. Piper was examined at length in regard to the dealings between the parties, that paper was not then produced, was not then referred to, nor was it identified by him. It is simply a typewritten draft of what purports to be an agreement, and it was unexecuted. There is no proof by whom or when it was prepared, or that either of the parties ever saw it. So far as the allowance referred to in said paper is concerned, and which appellant states complainant admitted embodied substantially the feature of allowance, it may be remarked that complainant expressly stated that while no such agreement as that referred to in the paper had been made between the parties, yet he gave certain receipts to Dr. Piper acknowledging payment of miscellaneous sums of money (although no money in fact passed) to cover the payments made by complainant on account of certain expenditures made in the building and interior equipment of the new house, such as mantels, fire-places, steam heat, etc., the cost of which had been paid by complainant, and he was theoretically reimbursed by Dr. Piper by the passing of these receipts quarterly, the complainant stating that the Doctor was punctilious about such matters, and that it was to gratify the feelings, desire, and wish of the Doctor rather than as matter of business that

these receipts were passed in the manner indicated; but no money, in fact, passed, and, as testified by complainant—

"there never was any question of money between us, nor would there have been in any way, as I never took any money from Dr. Piper for anything whatever" (*R.*, *234–237*).

In conclusion, counsel ask attention to the following reply to certain additional matters urged in appellant's brief:

I.

WHEN TWO COURTS HAVE REACHED THE SAME CONCLUSION ON QUESTIONS OF FACT, THEIR FINDING WILL NOT BE DISTURBED UNLESS IT BE CLEAR THAT THEIR CONCLUSION WAS ERRONEOUS.

It is to be observed that in this case both the trial court and afterwards the Court of Appeals, on appeal, found from the evidence in the case that a contract existed between the parties, as claimed in the bills of complaint, together with its terms.

The burden of appellant's brief is directed to endeavoring to show that the conclusions of said two courts in respect of said matters of fact are erroneous.

It has been frequently decided in this court that the concurring decisions of both courts below upon questions of fact are to be followed, *unless clearly shown to be erroneous.*

> Morewood *v.* Enequist (23 How., 491); The Richmond (103 U. S., 540) and cases there cited; The Conqueror (166 U. S., 110); Compania de Navagacion *v.* Brauer (168 U. S., 123); Stuart *v.* Hayden (169 U. S., 1, 14); Baker *v.* Cummings (*id.*, 189).

It is therefore submitted that, under this rule of decision, this court will not review the conclusions of the two courts below on the effect of the evidence, as it certainly cannot be

said in this case that it is "clear that their conclusion was erroneous."

II.

THE DEFENSE OF LACHES.

Appellant, in the brief filed herein, assigns as error, *inter alia:*

"6. In not holding that complainant's delay in attempting to enforce the alleged contract was a bar to this suit."

It may be remarked that this defense was not raised, nor the foundation laid therefor, by any averments in the answer; it was not raised during the taking of the testimony; it was not raised at the hearing in the trial court; it was not raised or relied upon in any way at the hearing in the Court of Appeals or assigned as error therein, and the question is now presented for the first time, and it is urged by appellant that this court, of its own motion, should consider, at this late and last stage of the case, the doctrine of laches in determining whether or not complainant is entitled to the relief prayed.

In the case of Sullivan *v.* Railroad Company (94 U. S., 811) it seems to be held that it is not necessary that the defense of laches be laid by averment in the answer if it appears at the hearing that the case is open to such objection. It does not, however, appear in the report in that case whether that defense was raised for the first time on the hearing in the Supreme Court.

Conceding, however, for the purpose of argument, but not admitting, that such defense may be now alleged, it is submitted that the facts in this case do not, in any sense, fall within the reason of the doctrine now invoked.

The doctrine of laches is based upon grounds of public policy, necessary for the peace of society and the discouragement of stale demands; and this rule is most frequently ap-

plied where the difficulty of doing entire justice arises by reason of the death of the principal witness or witnesses, or where the original transaction has become obscured by the lapse of time. In such cases a court of equity will, therefore, not aid a party whose application is thus destitute of conscience, good faith, and reasonable diligence (Mackall *v.* Casilear, 137 U. S., 566; Hammond *v.* Hopkins, 143 U. S., 224).

Laches is not, like limitation, a mere matter of time, but principally a question of permitting the claim to be enforced where it is an inequity, founded upon some change in the relations of the property or parties (Ins. Co. *v.* Austin, 168 U. S., 685).

The question of laches depends upon whether, under all the circumstances, a person is wanting in due diligence in commencing his action (Townshend *v.* Vanderwerker, 160 U. S., 171). In this last case a decedent had agreed with complainant, in consideration of his contribution in money and labor—one-half of the original cost of a parcel of land and a dwelling house to be erected thereon—to convey him a half interest therein. This agreement was made in 1879, and complainant, during the years and ending with 1884, fully complied with his agreement. The promisor lived five years longer, namely, until 1889, when she died, without having carried out her agreement. Suit was filed for specific performance of the contract, and, among other things, the defense of laches was interposed; but the court held that under the facts in that case, because of the intimate personal relations between the parties, that she had treated him and spoken of him as a foster-child, that whenever she was urged to carry out her contract with him she acknowledged its justice, and assured him that she had provided for him in her will, saying that she intended the house to be his when she was done with it, etc. (the complainant did not know until her death that she had not kept her promise in that regard), such defense could not prevail.

So in this case the agreement was upon Dr. Piper's promise

that he would devise the property to complainant, and the agreement to make a will, so far as complainant had any knowledge, was performed on at least three occasions, and, while it is true that Dr. Piper, from August, 1892, until the filing of this bill, was not physically residing with complainant, at the same time the close relations between them were kept up, Mr. Hay making several trips to Chicago, at his own expense, at the request of the Doctor, to look out for and protect the Doctor's interest; and, until 1896 (the bill in this case having been filed in December of that year), Dr. Piper was consulting with complainant and complainant had made trips to Newport at his request, and at his own expense, in connection with the Doctor's business, and it was through no fault of complainant's that Dr. Piper continued to remain away from his home. But, aside from all this, it was not until the actual recording of the deed from Dr. Piper to Miss Whitney, on October 17, 1896 (although the deed had, in fact, been executed August 4, 1896, knowledge thereof was kept from complainant), that complainant had any information that Dr. Piper not only *intended* to violate his agreement, but that he had, in fact, then *violated* it, and put it out of his power, by such conveyance, to ever perform and keep the contract. Then it was, for the first time, that complainant had knowledge of the real situation, and knowledge of a kind which made it incumbent upon him to pursue, with reasonable diligence, such remedy as he might be entitled to. Immediately upon discovering the existence of record of such deed, complainant wrote to the Doctor, insisting that he had faithfully carried out his (complainant's) part of the contract (letter of October 20, 1896; R., 290). In reply, Dr. Piper wrote, stating that it did not seem to him that he should consult complainant in regard to giving the Washington house to his niece (letter of October 23, 1896; R., 224). Again, complainant wrote to the Doctor in regard to the matter on November 11, 1896 (R., 290–292). Within a month from that date he filed the bill.

Even conceding the soundness of the decisions to which reference is made or can be made, in relation to the assertion of stale claims, it will be found that each of such decisions rests upon the particular facts in the individual case, and that, giving the widest scope to those decisions, they fall far short of making it possible to say in this case that the complainant has, in any way, slept upon his rights, or that he has, in any way, failed to exercise reasonable and due diligence in the assertion of his demands. Courts, in giving effect to the doctrine of laches, have uniformly based their decisions upon the inequity of permitting the assertion of stale demands and claims as being against the peace and welfare of society and property rights, and have made the rule particularly applicable in three classes of cases: (*a*) where the parties or witnesses are dead, and thus making it difficult, perhaps impossible, to contradict a given state of facts; (*b*) where by reason of long lapse of time the original transaction has become obscured, and (*c*) where the parties or property have changed their relation or situation.

None of these elements exists in this case. All parties were alive, able to, and did, testify; the original transaction was not obscured by the lapse of time; further, the situation of parties and property had in no sense changed, and the rights of no innocent third parties had intervened. So far as the appellant is concerned, the grantee in the deed aforesaid, she was a mere volunteer, confessedly received title without any consideration, and had full notice of the situation between Dr. Piper and Mr. Hay, and had knowledge, as she expresses it, prior to the conveyance, that the Doctor would probably give his property to Mr. Hay by will.

Respectfully submitted.

JEREMIAH M. WILSON.
A. A. HOEHLING, JR.
E. B. HAY.

WASHINGTON, D. C., *November* 14, 1900.

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Supreme Court of the United States.

No. 112.—October Term, 1900.

Anna V. Whitney, Appellant, vs. Edwin B. Hay. } Appeal from the Court of Appeals of the District of Columbia.

[April 8th 1901.]

This suit was brought to obtain a decree declaring that the defendant Whitney held in trust for the plaintiff Hay the title to certain lots, with the building thereon, situate on Corcoran street in the city of Washington.

By a final decree in the Supreme Court of the District the relief asked was given—that court adjudging that the defendant Whitney, within a time named, make, execute and acknowledge a deed of conveyance of the premises to the plaintiff Hay, and that in default thereof the decree should have the same effect as if such conveyance had been made.

Upon appeal to the Court of Appeals of the District the decree of the Supreme Court was affirmed, an elaborate opinion on behalf of the appellate court being delivered by Mr. Justice Shepard. 15 *App. D. C.* 164, 173.

The principal facts upon which the plaintiff relies in support of his suit will appear from the following statement based upon the record:

Circumstances not necessary to be detailed brought Piper and Hay into each other's society while the latter was in the West, with the result that Doctor and Mrs. Piper conceived and expressed the warmest affection for Mr. and Mrs. Hay and in many ways indicated that they wished the latter to stand in the relation to them of son and daughter.

As early as May 27th 1883 Hay and wife received a letter written by Mrs. Piper for herself and husband, which was addressed "Dear Son Edwin and Daughter Florence." It closed with these words: "Do be careful Daughter Florence. As ever most affectionately, Father and Mother Piper." These relations continued during 1883, 1884 and 1885. And on the 23d day of December 1885 Doctor Piper wrote to Hay, addressing him as "My Dear Boy." After referring to Hay's then recent sickness, he said: "I wish that we were in Washington to look after you a little—perhaps we could help you some in that direction. By the way, what do you think of our looking to your city as a residence for the few years still perhaps left to us? Suppose I could command, say twenty-five thousand dollars certainly, and perhaps nearly as much more, what would you think it? We have no relations or friends to whom we owe anything as to the final disposition of our property." That letter thus

closed: "Good night, with much love to you all son, daughter, grandchildren and all."

Under date of January 11th 1886 Piper again wrote Hay, addressing him as "Dear Son, Ned." And on the 14th of January 1886 another letter, signed "Father and Mother Piper," and addressed to "Darling Edwin and Florence," was written as Piper and wife were about to leave Chicago for San Francisco, in which city the Doctor was to appear as an expert witness in the matter of handwriting. In that letter, which was written by Mrs. Piper for herself and husband, Hay and wife were informed that a will had been prepared and left in the custody of Judge Charles H. Wood of Chicago, by which "we bequeath to you the whole of our property with the exception of a few legacies amounting to about five hundred dollars." In the same letter it was said: "In case of Dr.'s death Edwin and I are appointed executors of the Dr.'s will. In case of our death by accident on the journey, Edwin will attend to all business connected with all property left by us, which with the exception of the legacies goes to Edwin as above stated. He will of course find the will deposited as above said with Judge Wood, and with it a schedule of property, and also a key to box in safe deposit vault of First National Bank, containing property as set forth in schedule above noticed. Edwin will look after this matter as soon after our death as possible, as there are some things in the papers and the will which will need immediate attention." The following postscript was added: "In case we are killed on our journey, going or returning, Edwin will find in connection with the will what we would desire to have done with our remains."

Under date of June 6th 1886 they wrote to "Dear Son Edwin and Daughter Florence" about the case upon which the Doctor had been engaged as an expert in handwriting, saying: "He has been very busy with a case which I wrote you about in my last, for this, which required an immense amount of work, he received $5,000; of course this is not to be mentioned to anybody but *our children*. The case was won." That letter closed with these words: "Good night from us both dear children. May heaven's choicest blessing be showered upon you. As ever affectionately, Mother and Father Piper."

Two days later, June 8th 1886, they wrote another letter addressed to "Dear Son Edwin and Daughter Florence," in which they said: "And now dear children I need not tell you how much we want to see you and the darling children. . . When we meet, which we shall do some time if nothing providential prevents, when I trust all can be arranged to the satisfaction of you our dear children and ourselves. . . Mr. Hyde, to whom we introduced you, is an excellent man, knows nothing of the relation we bear to each other particularly; only of course we tell him as we do everybody that you and yours are very dear to us, and that we look

upon you as our children; we did not enter into further particulars." That letter closed with these words: "We *both* send you oceans of love dear ones, let us hear soon, and believe us to be now and ever, on this side and the *other* if permitted, your affectionate, father and mother, R. U. and E. F. Piper."

Other letters of like character were written during August and September 1886. Under date of October 5th 1886 Piper and wife wrote to Hay, saying: "We rejoice to hear that you are all well, and thank you again dear, dear children for your loving words, which we well know come from your loving hearts; we fully appreciate them all, I cannot tell you in words how much. . . We shall be most happy to come to Washington, when it is convenient all round, more of that dear Edwin and Florence, if we reach Chicago in safety. Write us when you can, it is always a joyful event to us to receive your dear letters. We long to see you all, and if we live shall come when you are ready; in the meantime may heaven shower upon you and yours its choicest blessings. Dr. always reiterates *all I say.* I write *all* letters for him as that helps a little. As ever most affectionately, Father and Mother Piper." "We know you and Florence are truly happy in each other, dear Edwin, and that is one reason why we love you both so much. As ever affectionately, Mother and Father Piper."

Hay received another letter under date of November 7th 1886, addressed to him as "Dear Son Edwin," in which it was said: "The Dr. sends you the duplicate of a draft. The Dr. says: My legal friends here tell me that it would be evidence of property in the hands of an administrator in case of my death, and of course you would know how to collect it." Upon the back of that letter was the following endorsement: "The draft is for $5,300, fifty-three hundred dollars. We have also with us four trunks, containing clothes, and valise, microscope in box, and two valises."

Under date of November 19th 1886 Hay and wife received another letter addressed "Dear Daughter and Son," in which these passages occurred: "Dr. is anticipating great enjoyment from rides with Edwin, Jr. Now from Dr. He wishes me to say: We have now, in safety deposit vaults, twenty thousand dollars in cash, besides as you know the house built two years since which is worth ten thousand dollars. Dr. is anxious about investment and wishes you were here to consult him about it. Would you think it best to invest more here? Please write on receipt of this what you think of the matter, or is best to wait until we come to W. and then invest? Please answer at once. As ever dear children, Father and Mother Piper."

Shortly after that letter was written a girl was born to Hay and wife, and was named for Mrs. Piper. Under date of December 15th 1886 Mrs. Piper, addressing Hay and wife as "Dear, Dear Children," on behalf of "Father and Mother Piper," wrote: "We are both much pleased with

your kind thoughtfulness in naming the dear little one for us both, the Piper for Dr. and the Elizabeth for me. . . Would you both not rather call her Elizabeth Frances Piper Hay, you could then call the darling Frances, rather than by the perhaps old-fashioned name of Elizabeth." This request of Mrs. Piper was complied with, and the baby was named Elizabeth Frances Piper Hay. Later, January 17th 1887, Mrs. Piper wrote: "Dr. has for several weeks called me grandma, and I am very proud of the title; I forget sometimes to call him grandpa, but shall soon become accustomed to doing so."

According to the evidence of Hay several letters followed in relation to Doctor and Mrs. Piper coming to Washington. The result was that Hay and his wife consented to their coming to Washington. Under date of March 11th 1887 Mrs. Piper wrote to Hay: "I feel, however, that the Dr. must go somewhere before that time, and if it is not perfectly convenient for us to come to Washington at present, we will wait and take a short trip to Colorado or somewhere else. Now my dear son and daughter, tell us the exact truth with regard to this matter, as there *should surely be no hesitation in stating facts between us.* Our best love to darling Florence, and the babies, and a large share from us both for yourself. As ever affectionately, Father and Mother Piper."

This was followed by another letter, dated March 18th 1887, in which it was said: "I feel very anxious about him, I am still; and as physicians and friends all insisted that a change was better for him than anything else, and he is so much attached to you all, that I ventured to press the matter to our children, so I am sure you will appreciate. If we live and Dr. is able, I think we will start for W. some time next week, to-day being Friday the 18th. I would not come now as you are situated did I not feel so anxious about the Dr., and I cannot get him started for any other place now, although he did think he would go to Colorado, but he dreads going among strangers. As ever affectionately, Father and Mother Piper."

Doctor and Mrs. Piper arrived at Washington on the 25th of March 1887, stopping at Hay's residence. Being asked under what conditions or arrangements they came to his home, Hay testified: "Pursuant to the conversations we had had and the communications that had passed between us prior to their arrival, they came to live with us as a mother and father would come to live with children, and their dwelling with us was conditioned upon a covenant and agreement entered into that in consideration of permitting them to reside with us in this relationship during the balance of their lives and the services and care to be given to them that he would build a house in the city of Washington, District of Columbia, in which we should live together, and that at his death, not only the house, but all of his property should be willed to me." Hay further testified: "And Doctor Piper further stated that should I be taken away that he would

provide for Mrs. Hay and the children as if they were his grandchildren and she his daughter, and that should both of us be taken away during his lifetime that he would likewise provide for the children, and that he would rear and raise them, and upon this Mrs. Piper and Doctor Piper, Mrs. Hay and myself shook hands, and the Doctor himself called upon Heaven to witness the sincerity of the agreement." Being asked whether it was part of any agreement with Doctor and Mrs. Piper that they were to pay board at his house, Hay testified: "No; such a thing as board was absolutely never considered for a moment, nor, in fact, did the Doctor ever, for himself or his wife, pay one cent of money to me or Mrs. Hay for anything, but especially for board. Such was not the condition nor the agreement nor the understanding, as we were not breaking up our family and our family relations to take boarders, as there was no necessity to do such a thing. . . The Doctor paid nothing whatever toward the running expenses of my house in any way whatever or for anything, except, it occurs to me, at one time while we were away during a few weeks in the summer he asked if the hired manservant might return to wait upon him; and, if so, he would pay to him the sum of $10 per month. I don't know how much the Doctor paid, but it was not more than two months' wages."

Believing that the arrangement with Dr. Piper and his wife was to last during their lives, and desiring to make home as pleasant and agreeable as possible, Hay incurred considerable expense in furnishing proper apartments for them. The painting and papering were renewed. Rooms were set apart for their exclusive use, toward the furnishing of which the Doctor paid nothing. In expectation of their coming to his house as their permanent home, Hay had a bay window constructed on the front of his house, and erected a back building, so as to give an additional and larger dining room, a sleeping room, and a hall and bath room. The situation of Piper and wife in their new home was thus described by Hay in his deposition: "Doctor and Mrs. Piper were taken into our family just the same as if they had been our own father and mother; if anything, they were treated better than blood relations could possibly have been treated, as it was the constant desire of both Mrs. Hay and myself to make life as pleasant for them as it possibly could be under any circumstances, and so we put ourselves out in order to do so, notwithstanding that in prior communications they insisted that there should be no change in the relationship in our family and their family affairs."

Being asked what change, if any, was caused by the presence of Piper and wife in his home, Hay said: "The daily care of their rooms, the additional preparation and provision of food, and the especial manner of cooking it necessary to satisfy the Doctor, he being exacting in this particular. . . There were certain meats that the Doctor did not eat, steak being the favorite meat for himself, and it having always to be provided for him;

the cooking of a number of other dishes, different from what we had been accustomed, entailing additional and extra labor upon the cook." He further testified: "Everything was done for the pleasure of Doctor and Mrs. Piper. We were at home in the evenings, and brought in friends whom we thought would be congenial to the Doctor in his peculiar tastes. Doctor Piper, being a universally well read man, was ready to converse upon almost every subject. . . Originally he graduated as a doctor of medicine and surgery, and in his early days was the author of a wonderful book in its time, titled 'Piper's Surgery.' Being an artist, he was the first among the etchers in our country, and this book contains upwards of eighteen hundred illustrations, produced entirely with his pen. This book was used during the war in the army. Since that time he has illustrated a book upon 'Trees,' and has done very much fine microscopic work, and so he became interested in everything that could come under it, and finally got into handwriting, the use of the camera lucida being his method of examination. Since that time he had lost all other occupations, except that of being an expert in handwriting, and also a microscopic for the examination of food and of blood, and has been engaged in many cases that are recorded in the books. . . As the letters indicated, the Doctor did not seem to be well, but he has always been complaining. . . He required constant and particular attention, so much so that a physician was called in regularly and constantly for the purpose of frequently looking the Doctor over, and he continued his attentions to Dr. Piper during the years he was with us. . . They were perfectly contented and happy, and when a few weeks afterwards, to wit, in August 1887, we were away at the seashore, many, many affectionate letters were written by them. The following is from one dated August 8th 1887, speaking of the Doctor: 'He says, tell the dear children with much love that he rejoices in their happiness, and I assure you that he will do everything possible to promote it, and be assured I will second all his efforts.'" This last letter was addressed to "Dear Daughter Florence and Son Edwin," and was signed, "As ever affectionately, Father and Mother Piper."

The circumstances under which the lots in question were purchased and a house erected thereon may be thus summarized: Shortly after Doctor Piper reached Washington he insisted upon the purchase of a lot and the building of a house upon it to be occupied by the Hay family, in connection with himself and wife. His avowed purpose was to have a house in which all could live, and in which everything would be according to their liking. After looking at many lots, the one on Corcoran street was purchased, and attention was at once given to the preparation of plans for a residence. Hay drew the plans and submitted them to Dr. Piper before engaging the service of an architect. They were not revised by the Doctor, he saying that "whatever Mrs. Hay wanted was satisfactory to

him," and that everything should be done as she desired. The plans were such as to give a double house, with a hall through the center. The sitting room, parlor, and the dining room, as an "assembly" place for the whole family, were to be on the first floor. On the second floor it was arranged that upon the left of the hall, fronting north, the Doctor should have a strong room; back of that a sleeping room and a bath room, all of which were for their exclusive use, apart from the rest of the house.

As soon as the lot was purchased and paid for by Doctor Piper's check, and the plans for building were completed, and the ground broken for the house to be built, Piper insisted upon employing an attorney to write a will that would cover this and all other property owned by him. In the presence of Hay and the attorney engaged to write the proposed will, Mr. W. A. Cook, the Doctor referred to a former will made by him and deposited with Mr. Wood in Chicago, and stated "that as he had acquired additional property in the District of Columbia since that time and wishing everything to be exactly right in the matter that he would make another will, so he instructed Mr. Cook, in my presence, to make a will, including this property in the District of Columbia, # 1512 Corcoran street and the lots upon which it stands, and all of his property wherever situated, especially naming that in Chicago, and devising all the same to me, in trust for his wife, and at her death to belong to myself, my heirs and assigns forever." Subsequently to this interview with the attorney, the Doctor informed Hay that the will had been prepared and witnessed by three persons, and that he had "deposited it in the safe deposit company on the Avenue." Hay did not know what became of that will.

The statements of Hay in reference to the making of that will are sustained by the testimony of Mr. Cook, who stated in his deposition that he had prepared for Dr. Piper a will, which was duly signed, acknowledged and attested by witnesses, and by which the property in dispute on Corcoran street was devised to Hay. Doctor Piper stated to Mr. Cook "that the house [on P street] belonging to Mr. Hay was not a sufficient house, and that he ought to have a better and larger house, and he proposed to buy a lot, to which I have referred [on Corcoran street], and have a house erected on it suitable for Mr. Hay, and for his own accommodation, and one that would exist absolutely in Mr. Hay when completed." Again, the same witness: "He, Doctor Piper, said he was exceedingly pleased with the disposition that he had made of the house in giving it to Mr. Hay; that he had no regret in doing so; that his comforts and enjoyments had been greater after the giving of the house and after it was occupied by Mr. Hay than his comforts and enjoyments had been previously, and that if he had it to repeat he would make the same will and the same disposition of the property."

The work upon the house was watched with great interest by Doctor Piper and his wife. Quite a number of changes were made during its progress. They were made, Hay testified, "at the request of Mrs. Hay—the Doctor acceded to her wishes as he said he wished to have everything as Mrs. Hay desired it, because the house was being built for us and it should be in accordance with our ideas." The original intention was to have the house heated by furnace. But that was changed to steam heat at an expense of $1,000, of which Hay paid $700.

The house having been completed possession was delivered by Doctor and Mrs. Piper to Hay and wife. The latter moved into it on the first day of August 1888 and have been in possession ever since. Hay furnished the house completely with the exception of Dr. Piper's sitting room which was fitted up by the latter with furniture brought from Chicago. In addition to the furniture taken from the P street house, Hay was compelled to supply other furniture to the amount of about $1,200. He also paid for gas fixtures and mantels throughout the house; also for chandeliers. Going from the P street house into the house on Corcoran street necessitated the employment by Hay of two additional servants. Substantially, the entire expense arising from the occupancy of the new house was met by Hay.

Mr. Justice HARLAN, after stating the facts as above reported, delivered the opinion of the Court.

It appears from this statement that Doctor and Mrs. Piper, each somewhat advanced in years, were without children and had no kin to whom the husband desired to bequeath his estate. They longed for the comforts and happiness of a home in which they would have the sympathy, attention and care of younger people upon whom they could look as their children.

The bill alleged that the property in question was purchased by Doctor Piper in execution of an agreement in parol between him and Hay, whereby Piper and his wife were to become members of Hay's household in Washington and to be supported, maintained and cared for by Hay during their respective lives, in consideration of which Piper was to convey by will or otherwise to Hay all of his property of every kind and wherever situated; that in part execution of that agreement Piper purchased the lots in question and built a house thereon; that in further execution of it Piper put Hay in possession of the lot and house to be occupied as a home by the latter and his family in connection with Piper and his wife; and that while the plaintiff was in actual occupancy of the premises as his home—and he was still in such occupancy when this suit was brought—Piper, in violation of his agreement and for the purpose solely of defrauding the plaintiff, put the title to the property in his niece, the defendant Whitney.

Was there any such agreement between Piper and Hay? If so, was there such part performance of it as entitled the plaintiff to a conveyance from Piper, had he lived until the decree was passed? These are the questions for determination in this case.

In the allegations of his bill and in every essential fact Hay is so thoroughly sustained by witnesses that we do not hesitate to declare that the agreement with Piper is proved to have been just as stated by him. There can be no reasonable doubt as to its subject-matter, or its terms. There was no element of fraud or misrepresentation on the part of Hay. The terms of the agreement between him and Piper were clear and definite; its provisions fair, just and reasonable; the consideration mutual and entirely adequate. What Hay asked was not in any sense inequitable. That which he undertook to do in execution of the agreement was done by him promptly and in such way as to give no cause for complaint or objection by Piper. And all that he did had reference to and was consistent with the agreement, and can be referred to nothing else. His plans of life were materially altered in order that he might take care of Piper and wife during their respective lives. Piper put Hay in actual possession of the premises in question in execution of his agreement with Hay. But he failed to do that which was vital to Hay, namely, to put the absolute title to the property in him. Under all the circumstances, the failure of Piper to invest Hay with the legal title was such a wrong to the latter as entitled him, under the established principles of equity, to the protection which would be given by a decree specifically declaring that the defendant holds the title in trust for him. We are of opinion that such relief is consistent with the objects intended to be subserved by the Statute of Frauds; for the decree in favor of Hay does not charge Piper upon his parol contract with him, but rests upon the equities arising out of the acts and conduct of the parties subsequent to the making of the original agreement.

Referring to the Statute of Frauds and to the mischiefs intended to be reached by it, Mr. Justice Story says: "It is obvious that courts of equity are bound, as much as courts of law, by the provisions of this statute; and therefore they are not at liberty to disregard them. That they do, however, interfere in some cases within the reach of the statute, is equally certain. But they do so, not upon any notion of any right to dispense with it, but for the purpose of administering equities subservient to its true objects, or collateral to it, and independent of it." A case of such interference is when a court of equity enforces the specific performance "of a contract within the statute, where the parol agreement has been partly carried into execution. The distinct ground upon which courts of equity interfere in cases of this sort is, that otherwise one party would be able to practice a fraud upon the other; and it could never be the intention of

the statute to enable any party to commit such a fraud with impunity. Indeed, fraud in all cases constitutes an answer to the most solemn acts and conveyances, and the objects of the statute are promoted, instead of being obstructed, by such a jurisdiction for discovery and relief. And where one party has executed his part of the agreement, in the confidence that the other party would do the same, it is obvious, if the latter should refuse, it would be a fraud upon the former to suffer this refusal to work to his prejudice." 1 *Story's Eq. Juris.* §§ 754, 759.

This rule finds illustration in cases in this court; in *Neale* v. *Neale*, 9 *Wall.* 1, 9, where it was said that "the statute of frauds requires a contract concerning real estate to be in writing, but courts of equity, whether wisely or not it is too late now to inquire, have stepped in and relaxed the rigidity of this rule, and hold that a part performance removes the bar of the statute, on the ground that it is a fraud for the vendor to insist on the absence of a written instrument, when he had permitted the contract to be partly executed;" in *Brown* v. *Sutton*, 129 *U. S.* 238–9, which was a suit to enforce the specific performance of an oral engagement to convey certain real estate to the promisee, in consideration of her taking care of the promisor during the remainder of his life, as she had done in the past, the court holding that there had been such "part performance in its execution" as to bring the case within the exception made by that doctrine in the requirement of the Statute of Frauds that the sale of the lands must be in writing; and in *Townsend* v. *Vanderwerker*, 160 *U. S.* 171, 184, where it was said that "the general principle to be extracted from the authorities is that if the plaintiff, with the knowledge and consent of the promisor, does acts pursuant to and in obvious reliance upon a verbal agreement, which so changed the relations of the parties as to render a restoration of their former condition impracticable, it is a virtual fraud upon the part of the promisor to set up the statute in defense, and thus to receive to himself the benefits done by the plaintiff, while the latter is left to the chance of a suit at law for the reimbursement of his outlays, or to an action upon a *quantum meruit* for the value of his services." "Courts of equity," said Lord Cottenham, "exercise their jurisdiction in decreeing specific performance of verbal agreements, where there has been part performance, for the purpose of preventing the great injustice which would arise from permitting a party to escape from the engagements he has entered into, upon the ground of the Statute of Frauds, after the other party to the contract has, upon the faith of such engagement, expended his money or otherwise acted in execution of the agreement. Under such circumstances, the court will struggle to prevent such injustice from being effected; and, with that object, it has, at the hearing, when the plaintiff has failed to establish the precise terms of the agreement, endeavoured to collect, if it can, what the terms of it really were. It is not necessary, in this case, to adopt any such course of pro-

ceeding; for I think an agreement for a lease sufficiently proved, and that acts of part performance are proved, so as to take the case out of the Statute of Frauds; and I think the defences set up have wholly failed." *Mundy* v. *Joliffe*, 5 *My. & Cr.* 167, 177.

To the like effect are numerous other American and English cases which are familiar to the profession and need not be cited. They all proceed upon the ground that, although in a suit to enforce the specific performance of a parol agreement in reference to land the defendant cannot be directly charged upon the alleged contract itself, he may be held—the evidence clearly showing part performance, in substantial particulars, of such agreement—to do what justice requires to be done under the equities arising from acts done after the making of the agreement and in execution of its provisions. To refuse under some circumstances to compel the full execution of an agreement of that kind which has been partly performed would make the statute an instrument of fraud, and that a court of equity will not permit. "It is not arbitrary or unreasonable," said the Lord Chancellor in *Maddison* v. *Alderson*, *L. R.* 8 *App. Cas.* 467, 476, "to hold that when the statute says that no action is to be brought to charge any person upon a contract concerning land, it has in view the simple case in which he is charged upon the contract only, and not that in which there are equities resulting from *res gestæ* subsequent to and arising out of the contract."

The alleged agreement being one which a court of equity would specifically enforce if it had been in writing, and it having been partly performed by Hay in reliance upon performance by Piper, and Hay being ready and willing to do what, under the agreement, remained to be done by him during the lives of Doctor and Mrs. Piper, he was entitled to the decree rendered in his favor; and it is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.